4-91

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 148.

100 BARRELS OF WHISKY, CHARLES ANDRE, CLAIMANT, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

FILED OCTOBER 15, 1874.

SUPREME COURT OF THE UNITED STATES.

No. 148.

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100 BARRELS OF WHISKY, CHARLES ANDRE, CLAIMANT, APPELLANT,

vs.

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INDEX.

	Original.	Print.
Caption	1	1
Warrant of seizure, monition, and return	2	1
Petition for appraisement and delivery	6	2
Order appointing appraisers, (from minutes)	9	4
Appraisement	10	4
Delivery bond of Andre, claimant	12	4
Claimant's stipulation for costs	14	5
Order to deliver whisky to claimant, (from minutes)	16	6
Order to deliver whisky to claimant, and return of marshal	17	6
Libel of information	19	7
Amendment of libel	22	8
General issue of claimant	23	8
Claim and answer of Charles Andre	24	9
Amended answer	28	10
Deposition of Alexander Hall for libellant	29	10
Octave Aubert for libellant	33	11
J. S. Mansur for libellant	37	12
Agreement of counsel that proof in case No. 25, United States *vs.* 199 Barrels of Whisky, may be used in this case	41	14
Decree of condemnation in district court	42	14
Notice of appeal from district to circuit court	43	14
Order allowing appeal from district to circuit court	43	15
Petition for writ of error from district to circuit court	44	15
Bond for costs on writ of error	46	16
Final judgment in circuit court, (this set aside)	48	16
Motion for rehearing in circuit court overruled	50	17
Order vacating final judgment in circuit court	51	17

	Original.	Print
Motion for final judgment on bond in district court	51	17
Final judgment in district court	53	18
Order allowing appeal from district to circuit court	55	19
Appeal from district to circuit court	55	19
Appeal-bond to abide decree of circuit court	59	20
Appeal-bond for costs in circuit court	62	21
Amended answer filed in circuit court after appeal	64	22
Final decree in circuit court	66	23
Order allowing appeal from circuit court to Supreme Court of the United States	68	24
Appeal-bond to abide decree of Supreme Court	69	24
Clerk's certificate	73	25

1 Circuit court of the United States for the eastern district of Texas, in the fifth circuit.

THE UNITED STATES, LIBELLANT, *against* ONE HUNDRED BARRELS OF WHISKEY, Charles Andre, claimant and respondent, and against Charles Andre, claimant, and Gustav Oppermann and Sam Maas, sureties upon the stipulation for the release of said property, made defendants by the decree of the district court in said cause; and against Charles André, claimant, Gustav Oppermann and Sam Maas, and their sureties, upon the appeal-bond in said cause, John Berlocher and John K. Spiers, made defendants by the decree of said circuit court in said cause.	No. 729. On appeal.

Be it remembered that at a regular term of the circuit court of the United States for the eastern district of Texas, in the fifth circuit, begun and held at the court-rooms thereof, in the city of Galveston, on
2 Monday, the 4th day of May, A. D. 1874, and continued, by adjournment, to and including the 27th day of May, 1874, on which said last-named day a final decree was rendered in and by said court in the cause in the caption named, the Hon. Joseph P. Bradley, associate justice of the Supreme Court of the United States, presiding as judge of said court on said day, and the said cause having been appealed by the claimant and respondent and defendants therein to the Supreme Court of the United States, the record and proceedings in said cause is here set out in words and figures following, to wit:

Monition & warrant of seizure.—Issued April 17th, 1867.

District court of the United States for the eastern district of Texas.

[SEAL.] The President of the United States of America to the marshal of the eastern district of Texas, greeting:

Whereas a libel of information hath been filed in the district court of the United States for the eastern district of Texas by D. J. Bald-
3 win, esquire, United States district attorney for the eastern district of Texas, on behalf of the United States of America, and on behalf of George B. Douglas, deputy marshal for said district, against One Hundred Barrels of Whiskey, for reasons in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said one hundred barrels of whiskey may be cited in general and special to answer the premises, and that, all due proceedings being had, *that* the said one hundred barrels of whiskey may, for the causes in the said libel mentioned, be condemned, and the proceeds thereof distributed.

You are therefore hereby commanded to attach the said one hundred barrels of whiskey, and to detain the same in your custody until the further order of the court respecting the same, and to give notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned as forfeited, and the proceeds thereof

distributed according to the prayer of the said libel of information, that they be and appear before the said court, to be held in and for the eastern district of Texas at the United States court-rooms in
4 the city of Galveston, on the sixth day of May, A. D. 1867, at 10 o'clock in the forenoon of that day, if the same shall be a day of jurisdiction; otherwise, on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return, together with this.

Witness the honorable John C. Watrous, judge of the said court, at Galveston, in the eastern district of Texas, this seventeenth day of April, in the year of our Lord eighteen hundred and sixty-seven, and of the Independence of the United States the ninety-first year.

LEVI JONES,
Clerk District Court E. D. T., G.

Marshal's return.

Rec'd in office April 17, '67. Seized at Indianola by Alex'r Cold, dep., as per original return on process from Comr. Johnson.

WM. M. VARNELL, *U. S. M.*
By ALEX. COLD, *Dep.*

5 Advertised the same for 14 days in Bulletin and by notices at court-house prior to May 6th, '67.

WM. M. VARNELL, *U. S. M.*
NEILL, *Dep.*

Printed notice of monition referred to.

United States district court, eastern district of Texas, at Galveston, May term, 1867.

UNITED STATES *vs.* 100 BARRELS WHISKEY. } No. 26.

By virtue of a warrant of seizure issued by the said court and to me directed, I have seized the said one hundred barrels of whiskey at Indianola.

Notice is hereby given to all persons claiming the same, or knowing or having anything to say why the said whiskey should not be condemned as forfeited and the proceeds distributed according to the libel of information filed in the said cause, to be and appear before the said court, to be holden in and for the eastern district of Texas, at the United States court-house in Galveston, on the first Monday in May, 1867, at 10 o'clock a. m. of said day, then and there to interpose claim for the same.

6

WM. M. VARNELL,
United States Marshal.
[April 18—14t.]

APRIL 18, 1867.

(Endorsed:) A. 26. C. L. 729. United States district court, eastern district of Texas. Monition. Warrant of seizure. The United States vs. One Hundred Barrels of Whiskey. Issued April 17th, 1867. Levi Jones, clk. Filed April 30, '73. C. Dart, clk.

Petition for appointment of appraisers, &c.—Filed June 13th, 1867.

In United States district court, eastern district of Texas.

UNITED STATES
vs.
ONE HUNDRED BARRELS OF WHISKEY.

To the hon. the judge of the United States district court for the
7 eastern district of Texas:

The petition of Charles Andre, a resident of the city of Matamoras, State of Tamaulipas, republic of Mexico, sheweth, that on the 6th day of May, A. D. 1867, he filed his answer and claim in the above-entitled case, as the owner of the whiskey seized; that he is the owner thereof; that, owing to the continuance of said case upon the application of the Government, he is desirous of availing himself of the provisions of the act of Congress in relation to cases of seizure of property in any case depending in any court of the United States; wherefore he prays your honor to be pleased to appoint one or more proper persons to inspect and guage said whiskey, and to make due report thereof to your honor, also for the appointment of three disinterested persons to appraise the value thereof, and due report make to your honor in respect thereto, and that your honor will then be pleased to order that said whiskey be delivered to your petitioner upon his executing, with proper surety, such bond as your honor will require, conditioned according to law,
8 and for such other and further order as to your honor may seem right and lawful.

CHAS. ANDRE.

Subscribed and sworn to before me this 13th June, 1867.
L. JONES, *Clk.*

Per TUCKER & LEAGUE.

GALVESTON, *June 13th*, 1867.

Hon. D. J. BALDWIN,
United States District Atty., Eastern District of Texas:

SIR: Please take notice that we will move the court, in case No. 26 on the admiralty docket of the hon. United States district court at Galveston, on Monday the 17th day of June, A. D. 1867, at 10 o'clock a. m., or as soon thereafter as we can be heard, to grant the prayer of the foregoing petition.

Respectfully, &c.,

TUCKER & LEAGUE,
For Chas. Andre.

(Endorsed:) Rec'd June 13, 1867, and on the 14th day of same
9 month and same year I executed this petition and notice by giving to D. J. Baldwin, attorney for the United States, a true copy hereof certified by the clerk of this court.

JAMES J. BYRNE,
U. S. Marshal.

(Endorsed on back:) 26. C. L. 729. In admiralty. United States vs. 100 Barrels Whiskey. Filed 13th June, 1867. L. Jones, clk. Petition for appt. of appraisers and delivery. Filed April 30th, 1873. C. Dart, clk.

district, and are each worth the sum of five hundred dollars over and above all just debts and liabilities.

G. SCHMIDT.
G. OPPERMANN.

Sworn to. Subscribed & sworn to before me this 30th May, 1867.
L. JONES, *Clk.*

(Endorsed:) 26. C. L. 729. United States vs. 100 Barrels of
16 Whiskey. Claimant's stipulation.—Filed 30th May, 1867. L. Jones, clk.—Filed April 30, '73. C. Dart, clk.

Order to deliver whiskey to claim't.

(From the minutes May term, June 24th, 1867.)

THE UNITED STATES
v.
100 BBLS. WHISKEY.

On this day came Charles Andre, claimant in the above-entitled cause, and having filed his bond, duly approved by the court, as required by the court in this cause, and having complied with all the orders of the court herein, it is ordered, adjudged, and decreed that said 100 barrels of whiskey be delivered to said Andre, claimant, and that an order issue to the marshal, by the clerk, to put him in possession thereof, and that, prior thereto, the marshal put such mark or marks on said whiskey that no possible mistake shall occur as to its identity, and that the bill of charges set out in the suggestions of Milton Stapp, esquire,
17 collector of internal revenue, be caused to abide the final determination of this suit.

Order to deliver whiskey.—Iss'd June 24th, 1867.

UNITED STATES
vs.
100 BBLS. WHISKEY. } 26.

UNITED STATES DISTRICT COURT,
Eastern District of Texas, at Galveston, June 24, 1867.

On this day came Charles Andre, claimant in the above-entitled cause, and having filed his bond, duly approved by the court, as required by the court in this cause, and having complied with all the orders of court therein, it is ordered, adjudged, and decreed by the court that said one hundred barrels of whiskey be delivered by the marshal to said Andre, claimant, irrespective of any claim by Milton Stapp, esq., or any other person claiming storage thereon; and that, prior to the delivery of said whiskey, the marshal so mark and designate the same that no
18 mistake shall possibly occur touching its identity.

To the marshal of the eastern district of Texas:

SIR: As required in the decree of which the above is an excerpt, I have issued this that you may be apprised of so much thereof as relates to your duty, that, having notice thereof, the will of the court expressed in the premises may be fully carried out.

[SEAL.]

LEVI JONES,
Clerk Dist. Court E. D. T., G.

Marshal's return.

Received June 24th, 1867, and on the 29th day of same month and same year, I delivered to the within-named Charles Andre, at Indianola, in this district, fifty-five barrels of the whiskey, and collected and paid him $1,857.00, the proceeds of the remaining 45 barrels.

J. J. BYRNE, *U. S. M.*,
By M. K. CANFIELD, *Dept.*

19 (Endorsed:) A. D. 26. C. L. 729. Notice to the marshal. Issued 24th June, 1866. Levi Jones, clk. Filed Decr. 23, 1867. Levi Jones, clk. Filed April 30th, 1873. C. Dart, clk.

Libel.—Filed April 16th, 1867.

In the district court of the United States of America for the eastern district of Texas, at Galveston.

To the honorable John C. Watrous, judge of said court:

Be it remembered that on this 15th day of April, A. D. 1867, before the Hon. John C. Watrous, judge as aforesaid, comes in his own proper person, D. J. Baldwin, esquire, attorney of the United States for the said district, and in the name and behalf as well of the United States as of George P. Douglas, deputy marshal for said district, and of all other persons concerned, *and* propounds and gives the said judge to understand and be informed, that on the 18th day of March, A. D.
20 1867, at Indianola, in the district aforesaid, and on the waters navigable from the sea by vessels of ten or more tons burden, the marshal of said district did seize the following goods, wares, merchandise, and distilled spirits, to wit: one hundred barrels of whiskey, and now hath the same in his custody as being forfeited for the causes hereinafter mentioned:

§ 45, 14 Stats., 163. First. For that heretofore, to wit, on the 18th day of March, A. D. 1867, at Indianola aforesaid, the said distilled spirits, being subject to the payment of internal-revenue tax or duty before the same should be removed otherwise than into a bonded warehouse, were so removed otherwise than into a bonded warehouse without the internal-revenue tax or duty thereon chargeable by law having been paid.

§ 43. Second. For that no lawful or genuine inspector's brand was ever lawfully put upon said distilled spirits, and said spirits were removed for sale in fraud of the law for the purpose of evading payment of the duties and taxes thereon chargeable by law.

Third. That the said packages of distilled spirits, when found by
21 the said marshal, had never been inspected, gauged, proved, or marked, as required by the statutes in such case made and provided, and were fraudulently and illegally marked and branded.

Fourth. That all and singular the premises are true; wherefore the said attorney prays that process in due form of law may issue against the said goods, wares, merchandise, and distilled spirits, to enforce the forfeiture thereof, and requiring notice to be given to all persons concerned in interest to appear and show cause on the return day of the said process why such forfeiture should not be decreed.

D. J. BALDWIN,
U. S. Dist. Attorney.

(Endorsements:) A. 26. C. L. 729. The United States of America vs. One Hundred Barrels of Whiskey. Information. Filed 16th April, 1867. L. Jones, clk. Warrant issued April 17, 1867. Levi Jones,
22 clerk. The clerk will issue the process as prayed. John C. Watrous, U. S. judge, E. D. T. Filed April 30, '73. C. Dart, clerk.

Amendment of libel.—Filed 27th May, 1867.

In U. S. district court for eastern district of Texas, May term, A. D. 1867.

THE UNITED STATES OF AMERICA
vs.
100 BARRELS WHISKEY. } No. 26. Libel of information.

And the United States of America, who prosecute, by D. J. Baldwin, district attorney for said district, come and amend the libel of information herein, by leave of the court first had, and as additional cause for forfeiture of said whiskey distinctly allege and propound as follows:

30 June, '64, § 2, 13 Stats., 202; 3 Mar., '65, § 2, 13 Stats., 491; 2 B., 166, § 51, 176, § 70.

That said whiskey was liable to payment of a duty of two dollars and fifty cents for each gallon thereon upon being introduced into the United States, and it was so introduced into the United States from Mexico, a foreign
23 B., 375, 6. country, without such duties having been paid, and such duties now remain wholly due and unpaid, and are a lien upon said whiskey till payment is made, and a decree is prayed for enforcing payment of said duties.

D. J. BALDWIN,
U. S. Dist. Atto.

(Endorsements:) 26. C. L. 729. The United States of America vs. 100 Barrels Whiskey. Amendment of libel. Filed 27th May, 1867. L. Jones, clk. Filed April 30th, 1873. C. Dart, clk.

Gen'l issue of claimant.—Filed Feby. 5th.

In United States district court, at Galveston.

UNITED STATES
vs.
100 BARRELS OF WHISKEY. } In ad. No.

And now comes Charles Andre, claimant in above-entitled cause,
24 and, answering, says that the said 100 barrels of whiskey in the information mentioned did not nor any part thereof become forfeited in manner and form as in said information in that behalf alleged, wherefore he prays judgment.

P'r TUCKER & LEAGUE,
Proctors.

(Endorsed:) No. 26. C. L. 729. United States vs. 100 Barrels of Whiskey. Gen'l issue of claimant. Filed Feby. 5th, 1868. Levi Jones, clk. Filed April 30, 1873. A. Dart, clk.

Claim & answer of Chas. Andre—Filed May 6th, 1867.

In the United States district court, at Galveston.

UNITED STATES
vs.
100 BARRELS OF WHISKEY.

To Hon. John C. Watrous, judge of the district court of the United
25 States for the eastern district of Texas:

The answer and claim of Charles Andre, merchant, a resident of the city of Matamoras, in the State of Tau*mu*lipas and republic of Mexico, intervening, for his interest in one hundred barrels of whiskey, to the information filed by the Hon. D. J. Baldwin, district attorney of the United States for said district, alleges as follows:

First. That he is the sole and lawful owner of said whiskey; that he, in the month of February last, was and now is in business at said Matamoras, as a merchant; that at said Matamoras, between the 1st and 12th days of February, A. D. 1867, he in the regular course of business, in open market, purchased, among other goods, wares, and merchandize, the whiskey in the information in this case mentioned, and paid the value thereof in money, and that said whiskey was then and there delivered to him, a portion at said Matamoras and the remainder thereof at Bagdad, in the same State and republic.

26 Second. That said whiskey was then, and so far as this claimant is informed now is, an article of merchandise the importation whereof into the United States, subject to the payment of duties fixed by the laws of the United States in relation to imported goods of that class, is allowed, and that by law he had the right to import the same.

Third. That on the 12th day of February, A. D. 1867, he applied to Richard L. Robertson, the United States collector of duties for the district of Brazos de Santiago, for permission to import said whiskey in the packages as purchased, which permission was granted; that he accordingly, openly, in the day-time, upon a public ferry or steamboat, transported said whiskey from said Matamoras to Brownsville, in the district of Brazos de Santiago, entered them at the custom-house of said district, and by bond secured the duties thereon according to law, and secured from the proper officer of the customs in said custom-house the usual certificate thereof, and sent said whiskey forward to Indianola
27 and Galveston (within the jurisdiction of this court) for a market.

That all and singular the premises are true and in accordance with the law; that he intended to and verily believes that he has in all things complied with the law; that the officers of the internal revenue have no right nor claim to or upon said whiskey; that it is not subject to the internal-revenue tax of the United States, and he prays judgment that the proceedings against said whiskey may be held for naught, and that said whiskey be delivered and restored to him.

CHAS. ANDRE.

Subscribed & sworn to before me this 6th May, 1867.
L. JONES, *Clk.*

(Endorsed:) No. 26. C. L. 729. United States vs. One Hundred Barrels of Whiskey. Claim & answer of Chs. Andre. Filed 6th May, 1867. L. Jones, clk. Filed April 30, '73. C. Dart, clk.

28 *Amended answer.—Filed June 2d, 1868.*

UNITED STATES
vs.
100 BARRELS OF WHISKEY. } 26. In admiralty.

To the hon. the judge, J. C. Watrous, of the United States district court in & for the eastern district of Texas:

The claimant, Charles Andre, by leave of the court, after amendment filed by the United States, files this his amended answer and denies the matters and things set forth in the original & amended libel of information in this case, and says that all the requirements of the law applicable to said whiskey had been complied with before the same was seized; that the same had been duly proved and marked, guaged and inspected, and the barrels properly branded by the lawful officer of the United States appointed for that purpose, and that all duties and taxes required by law had been paid thereon; and of this he puts himself on the country & prays judgment of restoration, &c.

CHAS ANDRE.

29 Subscribed & sworn to before me June 2d, 1868.

LEVI JONES, *Clerk.*

(Endorsements:) 26. C. L. 729. United States v. 100 Barrels of Whiskey. Amended answer filed June 2d, 1868. Levi Jones, clk. Filed April 30, '73. C. Dart, clk.

Deposition of Alex'r Hall.—Filed April 30, 1873.

THE UNITED STATES OF AMERICA
vs.
100 BARRELS WHISKEY, CHARLES ANDRE, claimant. } In admiralty.

Deposition de bene esse of Alexander Hall, a witness of lawful age, whose testimony, when taken and reduced to writing, is to be read in evidence on the trial of the certain cause now pending in the dis-
30 trict court of the United States for the eastern district of Texas, at Galveston, wherein the said United States is plaintiff and One Hundred Barrels of Whiskey is defendant, on the part of the plaintiff.

And the said witness being by me, F. J. Parker, clerk of the district court of the United States for the eastern district of Texas, at Brownsville, first duly cautioned and sworn, deposes and says:

That his name is Alexander Hall; forty years of age; a merchant and resident of Brownsville, Texas, for the last twelve months; that his intention is shortly to remove to Mexico; that he is acquainted with Charles Andre, who is now living and doing business in Matamoras, Mexico; that he knows of the shipping of a hundred barrels of whiskey on the schooner Island Belle at Brazos de Santiago, Texas, some time in February, A. D. 1867, by the said Charles Andre; that the said whiskey was taken from warehouse at Bagdad, in Mexico, and shipped on board the Mexican steamer Eugenia to Brazos de Santiago, in Texas; that he, witness, was present at the shipping of the said whiskey
31 and went on board said steamer to Brazos as aforesaid, where he saw the same put on board the Island Belle as aforesaid; that the said whiskey was marked "CK" with a $\overline{\text{A}}$ he thinks, over it, but is not certain whether over or under.

Witness does not know whether the internal-revenue brands were on the said whiskey or not; did not examine to see if such was the case or not. Witness believes said whiskey was of American manufacture, the product of the United States.

The Island Belle, as witness believes, cleared from Brazos for Galveston, and sailed about the last of February, A. D. 1867.

ALEXANDER HALL.

And I, the said clerk of the court aforesaid, hereby certify that on the 21st day of November, A. D. 1867, I caused the said witness, Alexander Hall, to be and appear before me, at my office in Brownsville aforesaid, to testify in behalf of the United States in the cause aforesaid, at the request of D. J. Baldwin, esq., dist. atty. of the United States for said district, for that, and I further certify that the said witness, Alexander Hall, is about, upon his own confession, to go out of the United States and out of the jurisdiction of this court, and that he lives more than one hundred miles from the place of holding court, to wit, in Brownsville aforesaid, and more than one hundred miles from the residence of any attorney of record of the claimant, Andre, and that the said claimant is himself a resident of a foreign country and not within the jurisdiction of this court. And I further certify that the said witness, Alexander Hall, was first by me duly cautioned and sworn and that his testimony was reduced to writing by me in his presence, and that the same was duly signed by him after being by him first read and approved.

32

And I further certify that I am not of counsel or attorney to either party, or interested in the event of this cause. And that I have retained these depositions in my hands for the purpose of sealing and delivering them into the hands of D. J. Baldwin, esq., to be by him delivered to the clerk of the said court at Galveston.

33

In testimony whereof I have hereunto set my hand and seal of said court, at Brownsville, this 21st day of November, A. D. 1867.

[SEAL.]

F. J. PARKER,
Clerk Dist. Ct. U. S., E. Dist. Tex.

(Endorsed:) C. L. 729. Filed April 30, '73. C. Dart, clk. Unpaid fee, $5. F. J. Parker, clerk.

Deposition of Octave Aubert.—Filed April 30, 1873.

THE UNITED STATES OF AMERICA
vs.
100 BARRELS OF WHISKEY, CHAS. ANDRE, claimant. } No. . In admiralty.

Deposition de bene esse of Octave Aubert, a witness of lawful age, whose testimony when taken is to be read in evidence on the trial of a certain cause now pending in the district court of the United States for the eastern district of Texas, at Galveston, on the part of the plaintiff.

34

And the said witness, Aubert, having been by me, F. J. Parker, clerk of the district court of the United States for the eastern district of Texas, first duly qualified and sworn, deposes and says:

That his name is Octave Aubert; twenty-one years of age; resident of Brownsville, Tex.; and for some two years and more an employee in

the custom-house at that place, both, at times, as entry clerk and book-keeper.

That on the 12th day of February, 1867, one Charles Andre entered at the custom-house here one hundred wagons, three hundred barrels of whiskey, &c., returned upon which "no drawback, allowance, or bounty has been allowed," and a bond was taken to that effect to produce the certificates from the proper collectors of customs at New York and New Orleans, according to law, within six months.

35 The proper custom-house documents were made and passed at the custom-house at Brownsville, (R. G. Robertson, collector,) on the above date, and the proper certificates having been produced within the time prescribed by law, from said New York and New Orleans collectors, the said bond was cancelled as to the said whiskey by H. M. Field, deputy collector of customs for said district; that he, witness, never saw the said barrels of whiskey, and cannot swear that the internal-revenue brands were on them, and that he knows that no import duties was paid upon said whiskey at the custom-house here; and further witness saith not.

OCTAVE AUBERT.

And I, the said clerk of the court aforesaid, do hereby certify that on this 22d day of November, A. D. 1867, I caused the said witness, Octave Aubert, to be and appear before me, at my office in Brownsville, to testify on behalf of the said United States in the cause aforesaid at the request of D. J. Baldwin, esq., atty. of the United States for the said dis-

36 trict, for that, and I do further certify that the said witness lives more than one hundred miles from the place of holding court, to wit, in Brownsville, in said district, and more than one hundred miles from the residence of any attorney of record of the said claimant, and that the said claimant Andre is a resident of a foreign country.

And I further certify that the said witness, Aubert, was first by me duly cautioned and sworn, and his testimony reduced to writing by me in his presence, and that the same was signed by him before me, after being by him first read and approved. And I further certify that I am not of counsel or attorney for either party or interested in the event of this cause, and that I have retained these depositions in my hands for the purpose of sealing and delivering to the said Baldwin, to be by him delivered to the clerk of said court at Galveston.

In testimony whereof I have hereunto set my hand and the seal of court, at office, this 22d day of November, A. D. 1867.

[SEAL.] F. J. PARKER,
Clerk U. S. Dist. Ct. East. Dist. Tex.

37 (Endorsed:) Ad. 26. C. L. 729. The United States vs. 100 Bbls. Whiskey. Deposition of Aubert. Filed April 30, '73. C. Dart, clerk.

Deposition of J. S. Mansur.—Filed April 30, '73.

THE UNITED STATES OF AMERICA
vs.
100 BARRELS WHISKEY, CHAS. ANDRE, CLAIMANT. } In admiralty.

Deposition, de bene esse, of J. S. Mansur, a witness of lawful age, whose testimony, when taken, is to be read in evidence on the trial of the certain cause pending in the district court of the United States for

the eastern district of Texas, at Galveston, wherein the said United States is plaintiff, and One Hundred Barrels of Whiskey is defendant, Charles Andre, claimant, and the said witness, being by me, F. J. Parker, clerk of the court aforesaid, at Brownsville, first duly cautioned
38 and sworn, deposes and says:

That his name is J. S. Mansur; thirty-four years of age, and for the last two years resident of Brazos de Santiago, in Texas; that he was an inspector of customs at said Brazos, when, on or about the 21st day of February, A. D. 1867, the Mexican steamer Eugenia arrived from Bagdad, Mexico, to the said Brazos, with, amongst other things, three hundred barrels of whiskey, said to be the property of Charles Andre; that, as such inspector of customs, he was ordered to discharge the said steamer, and that he put the said three hundred barrels of whiskey on board the schooner Island Belle; that he was further ordered to brand the said whiskey with the custom-house brand, to wit: "U. S. inspector district Brazos, Santiago," which he did; that he was so ordered to do by H. M. Field, deputy collector of said district; that there were as many as four different brands on said whiskey, but that having lost his memorandum-book in the late storm, he (witness) cannot now recollect what they were; that there is one brand which he recollects,
39 however, thus: S ⟨A⟩, among others, and that he thinks one hundred of the said barrels of whiskey had the U. S. internal-revenue brand upon them, but is not certain, and that his recollection is the balance of the said barrels were not so branded.

That the Island Belle cleared on the 9th Feb., 1867, for Galveston, but that after receiving the said whiskey on board she again cleared for Indianola, Texas, but, not being in the office, he (witness) does not know whether the first set of clearance-papers were cancelled or not; that the said first clearance was in ballast.

J. S. MANSUR.

And I, the said clerk of the court aforesaid, hereby certify that on the 22d day of November, A. D. 1867, I caused the said witness, J. S. Mansur, to be and appear before me, at my office in Brownsville, aforesaid, to testify on behalf of the United States in the cause aforesaid, at the request of D. J. Baldwin, esq., United States attorney for said district, for that; and I further certify that the said witness,
40 Mansur, lives more than one hundred miles from the place of holding court, to wit, at Brazos, aforesaid, and more than one hundred miles from the residence of any attorney of record herein of the said claimant, and that the said claimant, Andre, is resident in a foreign country; and I further certify that the said witness, Mansur, was first by me duly cautioned and sworn, and that his testimony as above was reduced to writing by me in his presence, and that the same was signed by him before me, after being by him first read and approved; and I further certify that I am not of counsel or attorney for either party in this cause or interested in the event thereof, and that I have retained these depositions for the purpose of sealing and delivering them into the hands of the said D. J. Baldwin, to be by him delivered to the clerk of the said court at Galveston.

In testimony whereof I have hereunto set my hand and seal of court, at office in Brownsville, day and date aforesaid.

[SEAL.] F. J. PARKER,
Clerk U. S. Dist. Court, East. Dist. Tex.

Fee, $5; not paid.

41 (Endorsed:) C. L. 729. Filed April 30, '73. C. Dart, clk.

Agreement of counsel as to proof.—Filed July 24th, 1869.

In the United States district court for the eastern district of Texas, at Galveston, Dec'r term, 1868.

THE UNITED STATES *vs.* 100 BARRELS OF WHISKEY. } No. 26. Libel of information for condemnation & forfeiture.

Be it remembered that on the trial of this cause the same facts, proofs, and witnesses were used, and the same decree rendered as in case No. 25 against 199 Barrels of Whiskey, and the statement thereof has been settled and filed in said cause No. 25; and it is hereby stipulated and agreed that the same statement shall be used and considered at full line in this cause, as if the same had been herein fully incorporated by words, letters, and figures.

D. J. BALDWIN,
U. S. Dist. Atto.
PHILIP C. TUCKER,
For Claimant Andre.

42 (Endorsed:) 26. C. L. 729. The United States vs. 100 Barrels Whiskey. Agreement. Filed 24 July, 1869. Levi Jones, clk. Filed April 30, '73. C. Dart, clk.

Decree of condemnation in dist. court.

(From the minutes May term, July 21, 1868.)

Hon. John C. Watrous, judge, presiding.

THE UNITED STATES *vs.* 100 BARRELS OF WHISKEY. } 26.

This cause came on to be heard at this term, the United States of America appearing by the district attorney, and the claimant of the property seized and libelled in this cause, Charles Andre, by Messrs. Tucker & League, his proctors; and thereupon, the issue having been joined, a jury was waived and the cause submitted to the court. Whereupon, the court having heard the evidence and the argument of counsel, and being fully advised, it is considered, adjudged, and decreed by
43 the court that a verdict be entered herein in favor of said libellant, and the libel herein filed sustained. It is further decreed by the court that the one hundred barrels of whiskey libelled herein be, and the same are hereby, declared condemned and forfeited to the United States of America, for the reasons in said libel set forth.

Notice of appeal from dist. to circt. court.

(From the minutes May term, July 22, 1868.)

THE UNITED STATES *vs.* 100 BBLS. WHISKEY. } 26.

Charles Andre, claimant in the above-entitled cause, this day appeared

in open court, by his proctors, Tucker & League, and excepts to all and singular the decree rendered herein on yesterday, and thereupon gave notice of appeal.

Order allowing appeal from dist. to circt. court.

(From the minutes May term, July 24, 1868.)

THE UNITED STATES
vs. } 26.
100 BARRELS WHISKEY.

44 On motion of Messrs. Tucker & League, proctors for the claimant in this cause, and for good cause shown, it is ordered that the appeal be allowed, and that said claimant have until the first day of the next term of this court in which to prepare exceptions to the decree and ruling herein, and prepare and file a statement of facts, and all matters and things connected with the perfection of said appeal, including the appeal-bond, to be continued until the next term without prejudice.

Petition for writ of error from dist. to circt. court.—Filed July 24th, 1868.

UNITED STATES
vs. }
100 BBLS. WHISKEY.

To the honorable the judges of the circuit court of the United States of the fifth circuit, for the eastern district of Texas:

The petition of Charles Andre, merchant, a resident of the city of Matamoras, State of Tau*mal*ipas, in the republic of Mexico, respectfully showeth, that at the term of the United States district
45 court for said district, held at Galveston, which commenced on the first Monday of May, 1868, there was a cause depending therein, on the exchequer side of the admiralty docket of said court, being a case of municipal seizure in favor of the United States against One Hundred Barrels of Whiskey, wherein your petitioner was a party, as claimant and owner of said whiskey, as appears by the records, said case being numbered twenty-six on the docket of said court; that on the 21st day of July, 1868, being a day of said term of said court, there was rendered final judgment in said cause, wherein and whereby said whiskey was condemned and forfeited to the use of said United States and of the informer mentioned in the libel of information filed in this case, upon which this petitioner, as *as* claimant, gave notice of appeal therefrom to the honorable the circuit court aforesaid; and said petitioner says that in said judgment and the proceedings in said cause there was manifest error, which was greatly to the damage of your petitioner; where-
46 fore petitioner prays for a writ of error to remove said cause to the honorable the circuit court of the fifth judicial circuit, in and for the eastern district of Texas, next to be held at Galveston, in and for said district, for revision and correction, and that said United States may be duly cited to be and appear before said court at said time and place.

TUCKER & LEAGUE,
For Chas. Andre.

(Endorsed:) C. L. 729. Charles Andre, claimant of 100 bbls. whiskey,

plaintiff in error, v. The United States. Petition for writ of error. Filed July 24, 1868. Levi Jones, clk. Filed April 30, 73. C. Dart, clk.

Bond for costs on writ of error.—Filed July 24th, 1868.

Circuit court of the United States for the eastern district of Texas.

UNITED STATES
adv.
100 BBLS. WHISKEY, CHARLES ANDRE CLAIMANT.

47 Know all men by these presents that we, Charles Andre, as principal, and John Barlocher and C. H. Ruff, as sureties, are held and firmly bound unto the United States of America in the sum of five hundred dollars, to be paid to the said United States, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated 24th day of July, A. D. 1868.

Whereas the above bounden Charles Andre hath prosecuted a writ of error to the circuit court of the United States (fifth circuit) for the eastern district of Texas to reverse the judgment rendered in the above-entitled case by the honorable the district court for the eastern district of Texas, (at Galveston:) Now, therefore, the condition of this obligation is such, that if the above-named Charles Andre shall prosecute his writ of error to effect, and answer all cost if he shall fail to make good his claim, then this obligation to be void; otherwise, the same shall be and remain in full force and virtue.

48 CHAS. ANDRE.
JOHN BERLOCHER.
C. H. RUFF.

In the presence of—
C. DART.
R. O. JOHNSON.

Approved.

JOHN C. WATROUS,
U. S. Judge, E. D. T.

(Endorsed:) C. L. 729. Charles Andre, claimant of 100 bbls. whiskey, plaintiff in error, v. The United States. Bond for costs on appeal. Filed July 24, 1868. Levi Jones, clerk. Filed April 30, 73. C. Dart, clerk.

Final judgt. in circt. court, (this set aside.)

(From minutes December term, 1872, Jan'y 31st, 1873.)

In the circuit court of the United States for the eastern district of Texas.

Hon. W. B. Woods, judge, presiding.

CHARLES ANDRE, CLAIMANT OF 100 BARRELS of whiskey,
v.
THE UNITED STATES. } No. 418. On appeal.

49 This cause came on to be heard at this term, the said claimant, Charles Andre, appearing by his proctors, Phillip C. Tucker and

J. Warren Bell, and the United States by the district attorney, D. J. Baldwin; and thereupon, and upon consideration of the pleadings and proofs in said cause, it is considered, adjudged, and decreed by the court that the allegations of the libel herein filed be sustained and the property libelled be, and the same is hereby, declared condemned and forfeited to the United States of America, for the reasons and causes in said libel set forth. And it appearing to the court that the property herein was delivered to said claimant, upon a stipulation duly executed by said claimant and G. Oppermann and Sam. Maas, sureties, dated June 21st, 1867, and filed in this cause, at its appraised value, the same being the sum of three thousand and six hundred dollars, ($3,600.00.)

Wherefore it is further considered and adjudged by the court that said claimant, Charles Andre, shall, within twenty days from this
50 date, pay into the registry of this court, and unto the clerk thereof, the said appraised value of said 100 barrels of whiskey, to wit, the said sum of $3,600, with interest thereon at the rate of six per cent. per annum from said 21st day of June, 1867, to this date, one thousand two hundred and twelve dollars, ($1,212.00,) amounting in the aggregate to the sum of four thousand eight hundred and twelve dollars, ($4,812.00;) also all costs about this suit sustained, to be taxed; and, in default thereof, then that execution issue therefor against said claimant and his said sureties, G. Oppermann and Sam. Maas.

Order.—Motion for rehearing overruled.

(From minutes Decr. term, 1872, Jan'y 31st, 1873.)

CHARLES ANDRE, CLAIMANT, } 418.
vs.
THE UNITED STATES. }

The motion of the claimant for a rehearing in this cause having been heard and considered by the court, is overruled.

51 *Order vacating judgt. in circt. court.*

(From minutes December term, 1872, Feb'y 26th, 1873.)

CHARLES ANDRE, CLAIMANT, } 417 & 418.
v.
THE UNITED STATES. }

The judgments heretofore entered at this term in these causes are hereby vacated and set aside.

Motion for judgt. on bond in dist. court.—Filed Feb'ry 26th, 1873.

In the U. S. district court, east'n dist. Texas, Galveston, December term, 1872.

THE UNITED STATES } No. 26.
vs.
ONE HUNDRED BBLS. WHISKEY. }

And now comes D. J. Baldwin, U. S. district attorney, and suggests and shows to the court here that on the 21st day of July, 1868, a decree

of forfeiture was entered herein against the property in the libel mentioned, but that no judgment was entered against Charles Andre, the claimant of the said property, or his sureties, G. Oppermann and Sam. Maas.

That said property was appraised by order of this court and de-
52 livered to claimant, upon his bond with the above-named sureties, before the trial and decree above mentioned, as appears of record in this cause; and more than twenty days have elapsed since the rendition of the decree of forfeiture in this cause; and the bond aforesaid is made part of this suggestion and motion, as if incorporated word for word herein.

Wherefore the said attorney now moves the court here to enter judgment against the said Charles Andre, claimant, and said Oppermann and Maas, his sureties upon said bond, executed by them in this cause, with interest from the date thereof, as the same appears of record, and for such other and further judgment, order, proceeding, consideration, and decree in the premises as to law and the very right of the matter shall pertain, &c.

D. J. BALDWIN,
U. S. Dist. Atto.

(Endorsed:) 26 C. L. 729. The United States vs. One Hundred
53 Bbls. Whiskey. Mo. for judgment on bond. Filed Feb'ry 26, '73. Geo. C. Rives, clerk. Filed April 30, '73. C. Dart, clk.

Final decree in dist. ct.

(From the minutes December term, 1872, Feb'y 26th, 1873.)

Hon. Amos Morrill, judge, presiding.

CHARLES ANDRE, CLAIMANT 100 BARRELS whiskey, *v.* THE UNITED STATES. } No. 26.

An interlocutory judgment having been entered in this case on the 21st day of July, 1868, and further proceedings having been suspended by writ of error, and the said writ of error having been dismissed, it is therefore now considered, adjudged, and decreed as follows: It appearing that the property in controversy was delivered to Charles Andre, claimant thereof, upon a stipulation duly executed by said claimant, and G. Oppermann and Sam. Maas as sureties, dated 21st day of June, 1868, and the appraised value of the property being the sum of three thousand six hundred dollars, therefore it is considered and de-
54 creed by the court that the allegations of the libel herein filed be sustained, and the property libelled be and the same is hereby declared condemned and forfeited to the United States of America, for the reasons and causes in said libel set forth; and, it appearing to the court *to the court* that the property herein was delivered to said claimant upon a stipulation duly executed by said claimant and G. Oppermann and Sam. Maas, sureties, dated June 21st, 1867, and filed in this cause, at its appraised value, the same being the sum of three thousand and six hundred dollars; wherefore it is further considered and adjudged by the court that said claimant, Charles Andre, shall, within twenty days from this date, pay into the registry of this court, and unto the clerk thereof, the said appraised value of said one hundred barrels of

whiskey, to wit, the said sum of $3,600.00, with interest thereon at the rate of six per cent. per annum from said 21st day of June, 1867, to this date, one thousand two hundred and twenty-seven dollars and sixty-cents, ($1,227.60,) amounting in the aggregate to four thousand
55 eight hundred and twenty-seven dollars and sixty cents, ($4,827.60;) also all costs about this suit sustained, to be taxed; and in default thereof, then that execution issued therefor against said claimant and his said sureties, G. Oppermann and Sam. Maas.

Order allowing appeal from dist. to circt. court.

(From minutes Dec'r term, 1872, Feb'ry 26th, 1873.)

CHARLES ANDRE, CLAIMANT 100 BARRELS whiskey, *vs.* THE UNITED STATES. } No. 26.

On motion of claimant's counsel, it is ordered that the claimant be allowed till the 10th day of April, A. D. 1873, to perfect his appeal.

Appeal from dist. to circt. court.—Filed April 30th, 1873.

THE UNITED STATES *vs.* 100 BARRELS WHISKEY, CHARLES ANDRE, claimant. } No. 26.

To the honorable the circuit court of the United States for the
56 eastern district of Texas, at Galveston:

The appeal of Charles Andre, Gustave Oppermann, & Sam. Maas respectfully sheweth, that on or about the day of , A. D. 1867, a certain libel of information was filed in the district court of the United States for the eastern district of Texas, at Galveston, by the Hon. D. J. Baldwin, U. S. attorney for said district, on behalf of the United States, against One Hundred Barrels of Whiskey, of which the appellant, Charles Andre, was and is the claimant, praying that the same be condemned and forfeited to the United States, for the reasons set forth in said libel of information, and thereupon the said Charles Andre answered fully thereto and asked that said libel be dismissed, as by reference to said libel and said answer may more fully appear. That said cause came on to be heard before the honorable Amos Morrill, judge of said district court, on or about the day of , A. D. 1873, upon the depositions and proofs taken in said cause, and the said judge, having advised thereon, did on the 26th day of February, A. D. 1873,
57 make his decree in said cause, whereby it was among other things decreed that said 100 barrels of whiskey be condemned and forfeited to the *to the* United States, and Charles Andre, Gustave Oppermann, and Sam. Maas pay into the registry of the said district court the sum of $4,812.00, and in default thereof that execution issue against them in favor of said United States for the same, and for costs, as by reference to said decree may more fully appear, and appellants are advised and insist that the said decree is erroneous, inasmuch as said 100 barrels of whiskey had been legally imported into the United States through the custom-house, at Brownsville, Texas, and was not in any wise subject to

forfeiture, and the same had not been delivered to appellants or either of them, and that said district court had not jurisdiction in the premises; and appellants for these and other reasons appeal from the whole of the said decree in favor of the United States to the next circuit court to be held in the said district, and on the said appeal they intend to make new allegations in the circuit court, and introduce the same
58 and new and further proofs, and they pray that the said decree and every part thereof may be reversed with costs, or such other decree thereupon made as to said circuit court shall seem just, and that the records and proceedings may be returned to the said circuit court, and that appellee may be condemned to pay appellants their costs & damages in the premises, and that final process in said cause be superseded; & will ever pray, &c.

BURROUGHS & ALLEN,
Proctors for Appellants.

APRIL 25TH, 1873.

I accept service of the foregoing, and further notice waived.
(Not signed.)

(Endorsed:) No. 26. Appeal ordered. Amos Morrill, judge. C. L. 729. Charles Andre, claimant, et al. v. The United States. Appeal. Filed April 30th, '73. C. Dart, clk.

59 *Appeal-bond.—Filed April 25th*, 1873.

In the district court of the United States for the eastern district of Texas, Decr. term, 1872.

THE UNITED STATES
vs.
100 BARRELS WHISKEY, CHARLES ANDRE, claimant.

Know all men by these presents that we, Charles Andre and Gustave Oppermann, and Sam. Maas, John Berlocher, and John K. Speirs, are held and firmly bound in the sum of eight thousand dollars to the United States of America, to be paid thereto, for which payment, well and truly to be made, we bind ourselves and each of us, and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals this 25th day of April, A. D. 1873.

Whereas said Charles Andre, G. Oppermann, & Sam. Maas has prosecuted an appeal to the circuit court of the United States in the eastern district of Texas, to be holden at Galveston, in said eastern district of Texas, to reverse a judgment rendered in the above cause by the
60 district court of said district:

Now, the condition of this obligation is such, that if the above-bounden Charles Andre, G. Oppermann, & Sam. Maas shall prosecute their appeal to effect and answer all damage, interest, and costs, if they fail to make their appeal good, then this obligation to be void; otherwise to be and remain in full force and virtue.

CHAS. ANDRE. [SEAL.]
G. OPPERMANN. [SEAL.]
SAM. MAAS. [SEAL.]

Acknowledged before me, by G. Oppermann & Sam. Maas, April 25, '73.

GEO. C. RIVES, *Clk.*,
By C. DART, *Dept.*

JOHN BERLOCHER.
JNO. K. SPEIRS.

Acknowledged before me, by John Berlocher & Jno. K. Speirs, April 25th, 1873.

GEO. C. RIVES, *Clk.*,
By C. DART, *Dept.*

Gustav Oppermann and Sam. Maas, being duly sworn, each for himself deposes and says that he is worth the sum of eight thousand dollars over and above all his just debts, liabilities, and exemptions,
61 and that they each have property within the eastern district of Texas liable to execution for said amount.

G. OPPERMANN.
SAM. MAAS.

Sworn to and subscribed before me Apl. 25, 1873.

GEO. C. RIVES, *Clk.*,
By C. DART, *Dept.*

John Berlocher and John K. Speirs, being duly sworn, each for himself deposes and says that he is worth the sum of eight thousand dollars over and above all his just debts, liabilities, and exemptions, and that they each have property within the eastern district of Texas liable to execution for said amount.

JOHN BERLOCHER.
JNO. K. SPEIRS.

Sworn to & subsc'd before me April 25, '73.

GEO. C. RIVES, *Clk.*,
By C. DART, *Dept.*

Approved.
AMOS MORRILL, *Judge.*

I, Gustave Oppermann, do solemnly swear that I am worth the
62 sum of eight thousand dollars over and above all my just debts and liabilities.

(Endorsed:) No. . Bond. 26. C. L. 729. The United States v. 100 Barrels of Whiskey. Appeal bond. Filed April 25, '73. Geo. C. Rives, clk., by C. Dart, dept. Filed April 30, '73. C. Dart, clk.

Appeal-bond for costs.—Filed April 30, 1873.

In the district court of the United States, eastern district of Texas, Decr. term, 1872.

THE UNITED STATES
vs.
100 BARRELS WHISKEY, CHAS. ANDRE, CLAIMANT. } No. 26.

Know all men by these presents that we, Charles Andre, G. Oppermann,

Sam. Maas, Reymershoffer, Reymershoffer, are held and firmly bound in the sum of two hundred dollars to the United States of America,
63 to be paid thereto, for which payment, well and truly to be made, we bind ourselves and each of us, and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals this 25th day of April, 1873: Whereas said Chas. Andre, G. Oppermann, & Sam. Maas has prosecuted an appeal to the circuit court of the United States in the eastern district of Texas, to be held at Galveston, in said eastern district of Texas, to reverse a judgment and decree rendered in the above cause by the district court of said district, now, the condition of this obligation is such that if the above-bounden Chas. Andre, Gustav Opperman, & Sam. Mass shall prosecute their appeal to effect, and answer all costs in said cause and just damages for delay and costs and interests on the appeal, then this obligation to be void; otherwise to be and remain in full force and virtue.

CHAS. ANDRE. [SEAL.]
J. REYMERSHOFFER, JR. [SEAL.]
J. REYMERSHOFFER, SR. [SEAL.]
G. OPPERMAN.
SAM. MAAS.

I, J. Reymershoffer, sr., do solemnly swear that I am worth the
64 sum of two hundred dollars over and above all my just debts and liabilities.

REYMERSHOFFER, SR.

Sworn to & subsc'd before me Mch. 3, '73.

GEO. C. RIVES, *Clk.*,
By C. DART, *Dept.*

I, J. Reymershoffer, jr., do solemnly swear that I am worth the sum of two hundred dollars over and above all my just debts and liabilities.

J. REYMERSHOFFER, JR.

Sworn to & subsc'd before me March 3, '73.

GEO. C. RIVES, *Clk.*,
By C. DART, *Dept.*

(Endorsed:) No. 26. C. L. 729. Appeal-bond. Chas. Andre, 100 bbls. whiskey. Filed April 30th, 1873. C. Dart, clk.

Amended answer.—Filed Feb'y 28th, 1874.

65 Circuit court of the United States, eastern district of Texas, Galveston, December term, A. D. 1873.

THE UNITED STATES
vs.
100 BARRELS WHISKEY, CHARLES ANDRE, claimant. } No. 729. In admiralty.

Claimant, for answer, propounds as follows, to wit:

First. There was not any valid subsisting seizure of the "res.," as forfeited to the United States, existing at the time the libel of information herein was filed, on, to wit, the 16th day of April, A. D. 1867.

Second. Forty-five (45) barrels of the "res." has not been restored to claimant, although often demanded.

Third. The several causes of action set forth in the libel and amended libel, nor any or either of them, (if any such ever existed,) did not accrue to libellants at any time within five years next preceding the filing of this libel.

Wherefore claimant prays that he be dismissed with cost, and for such other and further relief as unto the court may seem meet & just in the premises; & will ever pray, &c.

BURROUGHS & ALLEN,
Proctors.

66 (Endorsed:) No. 729. The United States vs. 100 Barrels Whiskey, C. Andre, claimant. Amended answer. Filed Feb'y 28th, 1874. C. Dart, clk.

Final decree.—Circuit court.

(From the minutes, May term, May 27, 1874.)

In the circuit court of the United States for the eastern district of Texas.

Before Hon. Joseph P. Bradley, judge.

THE UNITED STATES
v.
100 BARRELS OF WHISKEY. } No. 729. On appeal.

This cause came on to be heard at this term, the United States of America appearing by the district attorney, and the claimant of the property seized and libelled in this cause, Charles Andre, by Messrs. Burroughs & Allen, his proctors, and thereupon, the court, having heard the pleadings, and the evidence and argument of counsel, and having duly considered the same, and the court being now fully advised
67 in the premises, doth order, adjudge, and decree as follows: that the allegations of the libel herein filed be sustained, and the one hundred barrels of whiskey libelled in this cause be, and the same are hereby declared, condemned and forfeited to the United States of America, for the reasons and cause in said libel set forth.

And it appearing to the court that the property herein was delivered to said claimant, upon a stipulation duly executed by said claimant and by G. Opperman and Sam. Maas, sureties, dated June 21, 1867, and filed in this court in this cause, at its appraised value, the same being the sum of three thousand six hundred dollars;

Wherefore it is further considered and adjudged by the court that said claimant, Charles Andre, shall, within twenty days from this date, pay into the registry of this court, and unto the clerk thereof, the said sum of thirty-six hundred dollars, with interest thereon at six per cent. per annum from the 21st day of July, 1868, the date of the rendition of the decree of condemnation in the district court, to this date,
68 twelve hundred and sixty-three $\frac{60}{100}$ dollars, making in the aggregate the sum of four thousand eight hundred and sixty-three $\frac{60}{100}$ dollars, ($4,863.60;) also all the costs of this suit, to be taxed by the clerk; and, in default thereof, then that execution issue against said Charles Andre, claimant, and Gustav Oppermann, Sam. Maas, John Berlocher, and John K. Speirs, the sureties upon his stipulation filed in

this court, for the said sum of four thousand eight hundred and sixty-three $\frac{60}{100}$ dollars, with the interest accrued thereon, and the said costs.

Order allowing appeal from circuit to Supreme Court.

(From minutes, May term, May 29th, 1874.)

THE UNITED STATES
v.
100 BARRELS OF WHISKEY. } 729.

The claimant and respondent, Charles Andre, having given notice upon the rendition of the decree in this cause, the district attorney being present, of his desire to appeal to the Supreme Court of the United States from the decree of this court in this cause, the said appeal
69 is allowed, and the appeal-bond to be executed by said claimant and respondent to perfect said appeal is hereby fixed at double the amount of the judgment in this cause, to wit, the sum of nine thousand seven hundred and twenty-seven $\frac{20}{100}$ dollars.

Appeal-bond.—Filed June 22d, 1874.

Circuit court of the United States of America, eastern district of Texas, in the fifth circuit.

100 BARRELS OF WHISKEY, CHARLES ANDRE, claimant, & he & his sureties, Gustave Oppermann and Sam. Maas, John Berlocher, and John K. Speirs, appellants,
vs.
THE UNITED STATES, LIBELLANT AND APPELLEE.

Know all men by these presents that we, Charles Andre, Gustav Oppermann, Sam. Maas, John Berlocher, John K. Speirs, and Charles H. Ruff, & Max Maas, of the city of Galveston, in the county of Galveston, and State of Texas, are held and firmly bound unto the
70 United States in the sum of ten thousand dollars, to be paid to the said appellee, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the eight' day of June, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas the above-named appellants have prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the circuit court of the United States for the eastern district of Texas:

Now, therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

CHARLES ANDRE. [SEAL.]
GUSTAVE OPPERMANN. [SEAL.]
SAM. MAAS. [SEAL.]
JOHN K. SPEIRS. [SEAL.]
71 JOHN BERLOCHER. [SEAL.]
CHARLES H. RUFF. [SEAL.]
MAX MAAS. [SEAL.]

Acknowledged before me June 20th, 1874, by Charles H. Ruff & Max Maas, the sureties on the within bond.

C. DART,
Clerk U. S. Circt. Court, E. D. T., G.

Charles H. Ruff & Max Maas, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of ten thousand dollars over and above all his just debts and liabilities.

CHARLES H. RUFF.
MAX MAAS.

Sworn to & subscribed before me June 20th, 1874.

C. DART,
Clerk U. S. Circt. Court, E. D. T., G.

(Endorsed on margin of 1st page:) Bond approved. Amos Morrill, judge.

72 (Endorsed on back:) C. L. 729. The United States vs. 100 Barrels of Whiskey. Appeal-bond. Filed June 22d, 1874. C. Dart, clk.

73 In the circuit court of the United States for the eastern district of Texas.

I, C. Dart, clerk of the circuit court of the United States for the eastern district or Texas, at Galveston, do hereby certify the foregoing seventy-two (72) pages of writing to be a true copy of the record, and of all proceedings in the cause named at the beginning hereof, as the same now appears on file and of record in my office.

To certify which, witness my hand and seal of said circuit court, at office in the city of Galveston, in said district, on the 11th day of August, A. D. 1874, and of American Independence the ninety-ninth year.

[SEAL.]

C. DART,
Clerk U. S. Circuit Court, E. D. T., at Galveston.

(Endorsement on cover:) No. 148. 100 Barrels of Whiskey, Charles Andre claimant, appellant, vs. The United States. E. Texas, C. C. U. S. Filed 15th October, 1874.

REC. 148—3

In Supreme Court of the United States.

No. 347. UNITED STATES vs. 199 BARRELS OF WHISKY. CHARLES ANDRE, CLAIMANT.

No. 348. UNITED STATES vs. 100 BARRELS OF WHISKY. CHARLES ANDRE, CLAIMANT.

Appeal from the Fifth Circuit, Eastern District of Texas.

BRIEF AND ARGUMENT OF PROCTORS FOR CLAIMANT.

Wm. P. Baldwin

PROCTOR FOR CLAIMANT.

McKenna. Printer, 20th street, Galveston, Texas.

In Supreme Court of the United States.

No. 347.	UNITED STATES vs. 199 BARRELS OF WHISKY. CHARLES ANDRE, CLAIMANT.	Appeal from the Fifth Circuit, Eastern District of Texas.
No. 348.	UNITED STATES vs. 100 BARRELS OF WHISKY. CHARLES ANDRE, CLAIMANT.	

BRIEF AND ARGUMENT OF PROCTORS FOR CLAIMANT.

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES, WASHINGTON CITY, D. C.:

In the above entitled causes the parties, pleadings and proof are the same, and the subject-matter parts of the one importation, we therefore most respectfully beg leave to discuss both as one cause, and file this brief in both cases.

In 1864 and 1865, three hundred barrels of whisky, the product and manufacture of the United States, on which the tax was paid, was exported without the benefit of any drawback, bounty or allowance, to the Republic of Mexico; and about the first of February, 1867, Charles Andre, the claimant, purchased the spirits from Erhardt and other merchants at Matamoros. On the 12th February, 1867, Andre re-imported the 300 barrels of whisky, together with other merchandise not involved in this controversy, into the United States, at Brownsville, Texas, in the lawful, usual and customary mode of making importations,

at the United States Customhouse, and then, in like manner, withdrew the same from the customs officers for consumption

Andre shipped the spirits on the vessel Island Belle to Indianola and Galveston, Texas, landing 100 barrels at the former place, February 26, 1867, and 200 at the latter on March 14th, 1867.

On the 18th March, 1867, 199 of the 200 barrels landed at Galveston, and the 100 barrels landed at Indianola, were seized as forfeited to the United States for a supposed violation of the internal revenue laws; and on the 16th April, 1867, proceedings to enforce the forfeiture was begun by filing a libel in the District Court for the Eastern District of Texas, at Galveston.

On the 27th of May, 1867, an amended libel was filed, charging the articles to have been imported from Mexico, a foreign country, the duties due and unpaid, and a lien upon the same; and a decree is prayed for enforcing payment of the duties.

Andre made claim to the property, and filed his answer. The cause was heard before Mr. Justice Bradley in 1874, a decree of condemnation had, from which decree the cause was brought by appeal before this Honorable Court.

As a preliminary question, we renew our objections made in the court below, and overruled, and move to exclude as evidence in the cause the copies of "bond" and "cancellation certificates," found in the transcript, pages 19 to 24 Because—

1st. They are not papers authorized or required by law to be taken or filed in the Collector's office, and consequently, copies either certified, or sworn and examined, should not be admitted.

2d. They are not material to establish any point at

issue betwixt the parties; and if material, are secondary, and not the best evidence the nature of the case admits of.

3d. The Deputy Collector is not authorized by law to certify copies of records.

4th. The cancellation certificates do not purport to be originals or copies of any record.

5th. If offered to disprove or contradict anything stated in the affidavit of P. Aubut, filed April 16, 1867, then the libellant is estopped from denying the truth of anything therein stated by his written agreement admitting the facts therein stated to be true. Herman on Estopples' 353, 354; 1st Daniel's Chancery Practice, 848; 5th McClane, 204.

II. We now proceed to examine the several charges set out in the libel of information, in the order in which they are presented, and discuss the law and testimony applicable to each.

The first count is based on the 45th section of the act of July, 1866, 14th statute, page 163. In answer to the charges contained in this and the other counts in the libel of information, we say that it is established by the evidence in the cause:

1st. That the articles were the product and manufacture of the United States, and had been exported to Mexico, a foreign country.

2d. They had been purchased by the claimant at their fair market value, and by him—February 12, 1867—re-imported at Brownsville, Texas, in a lawful and regular manner.

3d. The proper customhouse documents were made and

passed by the collector; the casks inspected, gauged, proved and branded as required by law, and then delivered to claimant by the collector of customs.

By the act of July 28, 1866, section 12, 14th statutes, page 330, it is provided that in case no tax had been paid, or if paid, had been refunded by drawback or allowance, there was due the government on the importation of the articles, a duty equal to the tax imposed on such articles by the internal revenue laws. The question is, had the tax been paid? The officer charged by law with the duty of ascertaining that fact, and answering that question, determined the tax had been paid and not refunded. On what evidence he acted is not material to inquire; nor is it material to know on what evidence he acted when he cancelled the bond. No such state of case is presented by the pleading in this cause, as to require the court to examine the sufficiency of the evidence on which he acted, or to review the correctness of his judgment in the matter. It is sufficient for the trial of this cause for us to know that he acted in the discharge of a duty imposed on him by law, and within the scope of his powers. The articles had been imported as provided by law; they were in possession of the customs officers; the owner and importer made application for them; the collector had to determine what the dues were; and to do this under the law, he had to learn whether or not the articles were the growth, product and manufacture of the United States. Having satisfied himself that they were, his next inquiry was to learn if the tax had been paid, and if paid, had it been refunded. On evidence of which he was the sole judge, he determined the tax had been paid and not refunded. The collector may have been satisfied of this, and yet have required the bond as a precautionary

measure to cover and save the Government in case he should afterwards learn that he had come to an erroneous conclusion. We have not viewed the bond and cancellation certificates as a matter material in elucidating and proposition the court is called on to solve. And what we claim is, that the act of the collector of customs in the premises was PRIMA FACIE evidence that the tax had been paid and not refunded, and for this we cite 1st Greenleaf on Evidence, page 259, section 27. Carpenter vs. Runnels, 19th Wallace, 146. Philadelphia and Trenton Railroad Company vs. Stimpson, 14th Peters, 448. 12th Wheaton, 170. 2d Ohio State, 242.

The testimony is that "the proper customhouse documents were made and passed, and articles branded." See the testimony of Hall, Aubert, Mauseer and Field. P 12

What these customhouse documents and customhouse brands may be, is defined in sections 39, 40 and 41 of the Act of March 2, 1799, and their effect is defined by the 41st section of said Act to be "evidence that the articles have been lawfully imported."

We respectfully submit that the libellant established by her testimony, beyond doubt and controversy, that the articles were the product and manufacture of the United States, on which the tax had been paid and not refunded, they had been exported, and lawfully imported; and we insist this is a complete and perfect vindication of the articles from every substantial charge made or attempted to be made in the libel, and brings us within the rule laid down in the Lady Pike, 21st Wallace. That in a clear case the court will reverse, notwithstanding the act of the court below.

As to the first charge set out in the 2d and 3d counts, and so much of the second count as charges that "said

spirits were removed for sale, in fraud of law, and with intent to evade payment of duties and taxes thereon; chargeable by law;" which is supposed to be based on the 15th clause of the 9th section of the Act of 1866, 14th Statutes, page 111, or on the 14th section of the Act, is answered by our argument on the first count. We ask, if the tax had been paid and not refunded, how could the articles have been removed with intent to avoid the payment of the tax?

The last charge set out in the 2d and 3d counts is, that the "barrels were fraudulently and illegally marked and branded;" and at the hearing before Mr. Justice Bradley, a forfeiture was claimed and a decree of condemnation had under that charge, on what we understood to be the following grounds, to wit:

1st. The burden of proof was on the claimant.

2d. It appeared from the testimony of H. M. Field, that the marks required by the 43d section of the Act of July, 1866, 14 Statute, page 162, was on the barrels when imported, February 12th, 1867.

3d. The cancellation certificates and the testimony of Aubert show the articles were exported previous to the passage of the Act of 1866, requiring such a mark.

Therefore, it was held the articles were fraudulently and illegally marked and branded.

All of which we assign as error, and proceed to show the decree cannot be sustained on those grounds.

1st. In case of seizure for an infraction of any provision of the 45th section of the Act of July 13, 1866, by its terms the burden of proof was on the claimant to show "that the requirements of law have been complied with." If that was not repealed by the 36th and 105th sections of the Act of 1868, it was not because the entire matter had not been revised and a new rule

adopted; nor that it maintained, continued or enforced a lien, fine, penalty or forfeiture, or affected any act done, right accrued, or penalty incurred under former acts; but whether repealed or not, we claim that each count must stand or fall on its own merits, without assistance from any other; and the libellant having failed on the first count, the provisions of the 45th section of the Act, throwing the burden of proof on the claimant went with it, and should not be held to apply or influence the court in a trial of matters contained in other counts, based on different laws, and not connected in any manner with the offence defined in that section.

2d. The provisions of the 36th section of the Act of 1868, and section 3333 Revised Statutes, requiring the claimant to show "that no fraud has been committed and that all the requirements of the law in relation to the payment of the tax has been complied with," should be held to apply to such articles only as may be seized after the passage of the acts; for before the passage of the Act of 1868, a dealer in such articles was not required to have or preserve evidence of the moral conduct of its previous owners. We therefore respectfully insist that the language of the former Act, "In case of seizure of any distilled spirits," etc., and of the latter Act, "whenever seizure is made of any distilled spirits;" etc., in the absence of express contrary intent, should be construed to have a prospective operation only. 15th Howard, page 424, and authorities hereafter cited on the same question.

3d. The phrase, "That no fraud has been committed," should be held to have exclusive reference to the specific illegal act set out in the libel.

4th. Proof that all the requirements of law had been complied with is full proof of the absence of fraud, and that none had been committed.

II. As to the second ground, we say, what constitutes

a "United States Inspector's brand or mark" is a question of law; what marks or brands were on the barrels when imported are matters of fact—the former to be derived from the statute; the latter from the testimony. H. Field and M. Stapp testified there was on the barrels: "Manufactured prior to Sept. 1st, 1866." By reference to the 43d section it will be seen that was only a part of the mark (less than one-half) required by that section, and so much of it as was on the barrels was nothing more than a trade mark denoting age. It was not verified. It was like a note or bond not signed—a final process without seal or attestation. It had no legal import or effect, and if we say anything less than the words and figures required by the statute constitute a United States "Inspector's brand," the question would be how much less would do? If one half, why not one-fourth, one word, letter, or figure?

If the use of anything other than a brand, as defined by the statute, is such a "branding" as would deprive the citizen of his liberty or property, then both would depend on the Judge, and not on the law; for what one Judge might think sufficient another would not. If the tax had been paid and not refunded, how could there be a fraudulent and illegal branding?

If the brand, "tax paid," is relied on for any purpose adverse to the goods, the remarks made in reference to the other brand apply with equal force to it it was not evidence of anything; its absence or presence was of no importance. It is not a United States Internal Revenue brand. It may have been very properly placed there by revenue officials previous to exportation, or by the Mexican authorities. Its presence was not inconsistent with the innocence of the Res. There is

no proof it was there when seized; the receipt of the seizing officer indicates the absence of such a brand was the cause of seizure. Canfield, the delivering officer, discovered it day of June, 1867, long after the libel and amended libel was filed, and then only when he *washed* the heads of the barrels to affix the brand required by order of the court, on delivering the property to the claimant. If its presence is to operate any injury to the claimant, the fact that the libellant failed to establish its presence by Field when imported, or by Stapp when seized, and that the informer then had half the value of the goods forfeited, and that 48 barrels was spirited away from the court and claimant, present as strong grounds to suppose it was placed there after seizure by some official, as that it was illegally done by the claimant after importation. But, be that as it may, and give that brand every force and effect whatever adverse to the goods, Canfield, the only witness who testified to its existence, says, it was not on fifteen or twenty barrels of the whole number he marked and delivered, and there were three barrels of the 199, and forty-five of the 100 he never saw or delivered, making (68) sixty-eight barrels for or against which there is no evidence of the kind.

II. Let us concede for the argument that the testimony shows the brand required by the 43d section of the Act of July 13, 1866, was on the barrels when imported February 12, 1867; and we admit it was clearly established that the articles were exported previous to the passage of the Act of 1866, declaring such to be a United States internal revenue brand, and requiring the same placed on such articles, then it necessarily follows that

the brand was placed on the articles outside of the United States, and while they were in a foreign country, or if branded inside the United States, it was done previous to the passage of the Act of July 13, 1866.

If the brand was placed on the articles in the United States, and before the passage of the Act, that would not have been a "fraudulent and illegal" branding, nor would they have been thereby subject to forfeiture under the law, "for, in the absence of express contrary intent, a law will be construed to have a prospective operation only;" and "as a general rule for the interpretation of statutes, it may be laid down, that they never should be allowed a retroactive operation, where this is not required by express command or by necessary and unavoidable implication." Murray vs. Gibson; 15 Howard, 424. Sedgwick on Constitutional and Statutory Law, p. 195. Dash vs. Van Kluk; 7th Johnson, 477. Johnson vs. Burrell; 2d Hill, 238. Bailey vs. Mayor, 146. Webster vs. Cooper; 14th Howard, 504. Smith vs. Humphrey; 20th Michigan, 398. People vs. Columbia County; 43d New York, 130. Linn vs. Scott; 3d Texas, 77–78. Taylor vs. Duncan; Dallam, 514, Texas Reports. Sellkirk vs. Betts; Dallam, 471.

If the brand was placed on the articles when outside of the United States, and while in a foreign country, it is not material whether the branding was done before or after the passage of the Act of 1866, for in no event would it be a fraudulent and illegal branding, or a violation of any revenue law of the United States.

The fact that that the articles were of American manufacture, neither increased nor diminished the power of Congress over them, and the laws of the United States,

was not intended, and could not control or apply to them after their exportation, and while in a foreign country, any more than if they had been of foreign product and manufacture. The power of Congress over them is not dependent on the fact that they were a domestic product, but is based on and derived from her power to levy and collect duties, etc. When the goods left the territory of the United States, they were, to all intent and purpose, as independent of, and foreign to her revenue laws and regulations, as if they had been a foreign product, and never subject to her jurisdiction, and Congress has not attempted to exercise any power or authority over them other than that which she exercises over all importations; that is to say, she fixed the rate of duty and regulated their importation.

Neither constitutions nor statutes have any intrinsic force *ex propria vigore* beyond the territory of the sovereignty. Sedgwick on Constitutional and Satutory Law, page 70.

"And however general and comprehensive the phrases used in our municipal laws may be, they must always be restricted in construction to places and persons upon whom the Legislature have authority and jurisdiction" The Apolion 9th, Wheaton, 362.

The same doctrine is found in 1st Bishop's Crim Law, section 189; Vattel's Law of Nations, 108; 2d Kent's Commentaries, 678 and 579; Sedgwick on Constitutional and Statutory Law, 83, 97, 333 and 335.

Whatever may be the rule in offences *mala per se*, we insist that in offences *mala prohibita*—as laws to protect the revenue, or the currency, of which the alleged offender may be not merely ignorant, but not chargeable

with knowledge—the municipal law does not apply, either in *personam* or in *rem*. Sedgwick on Con. and Stat. Law, page 85.

Can a revenue law be violated when none exists? The foundation of all criminal law is the assumption that every one knows the law. When the reason of a law ceases, then the rule itself ceases.

There can be no crime without a criminal; there can be no forfeiture without some precedent criminal act—the two are inseparably connected; the former cannot take place under the statute without the latter. And as the latter never could exist for an act done outside of the United States, the former can have no foundation.

If a forfeiture be decreed on the 43d section, it must be based on the previous "branding, knowing the tax was not paid," or if on the 38th section, on the "branding with fraudulent intent," or if on the 16th section, on the "branding a barrel when emty, or when containing," etc., so as to show that some provision of the revenue laws has been complied with and in violation of the provisions of this section, which necessarily implies a knowledge of the revenue laws, as a person ignorant of them could not know what would violate their provisions or show the same had been complied with; so, in either case, the forfeiture, if decreed, must be based on an act, innocent in itself, and done by a person not charged with a knowledge of the law, and at a place and on a thing the law could not and did not intend to reach or apply. It is a well established rule, that if there be no evidence the offence charged was committed within the jurisdiction of the court, there should be an acquittal. Glen vs. The State; 31st Indiana, page 480. Therefore, because the

testimony does show the act for which a forfeiture is claimed, was committed outside the territory of the United States, or if inside, it was before the passage of the Act, the decree should be in favor of the claimant.

If this is not logical, then any foreign liquors, lawfully imported, would be subject to forfeiture under the 45th section, for having been "removed from the place where the same where distilled otherwise than into a bonded warehouse, as provided by law"—particularly as *knowledge* nor intent, with which the act was done, form no part of the offence. That would be no less an offence against the laws of the United States than the act of marking done beyond the limits of her territory. The laws of the United States apply, and with equal force, in the one instance as in the other.

In answer to the fourth count, or amended bill we say: As a matter of fact, there was no duty due. The articles were American manufactured, the tax had been paid, and not refunded, as evidenced by the action of the Collector of Customs, who by law was charged with the duty of ascertaining the fact; and while we do not claim the libellant concluded or estopped by the act of the Collector of Customs in the premises, we do claim his action to be sufficient to raise a presumption that the tax was paid, and not refunded, and a party seeking to show the contrary would be required to make proper averments, and produce proof to rebut that presumption, which has not been done in this case. We admit the libellant had a lien on the articles imported, for her duties, if any, were due, and that lien would not be lost if the goods were fraudulently withdrawn from her, and by proper proceedings, having that object in view, she

could collect her duties by enforcing her lien; but an officer, in the discharge of his duty, and within the scope of his powers, determined they had, and accepted our bond to secure the same, if any was due, and delivered us the articles, and thereby waived the lien; but, be that as it may, we deny that in a proceeding of this character her duties can be collected or her lien enforced, and to this point we cite the case of the United States vs 350 chests of tea. 12 Wheat., 486. U. S. vs. Boxes of Pipes; 2d Abb. U. S. 6, 500.

II. If our defense to the charges set out in the first, second and third counts was in anywise defective, the libellant furnished us with a full and perfect answer when she filed her supplemental bill, wherein she averred the articles were imported from a foreign country, to wit: Mexico," for we do not consider the internal revenue laws applied, or was ever intended to apply, to imported articles.

The Act of July 13, 1866, by its provisions, took effect (unless otherwise specially directed) August 1st, 1866. The articles were exported long before that date, and consequently, if the owner, previous to exportation, had done everything with and to them prohibited by that act, or had omitted everything enjoined by it, it would not have been an offence, as the law was not intended or commended to have a retroactive operation. After they were "lawfully imported," and so long as the spirits remained in the original packages, I cannot conceive of any act which the owner could have committed, or omitted, (aside from the license or occupation laws,) which would have subjected the owner to punishment or them to forfeiture, under the internal revenue laws. They were introduced and recognized as property within the jurisdiction of the United States, and by virtue of her

import laws—we may say they were the product and *born* of the *import laws*—which form a code, and are administered by a corps of officers, as independent of, and distinct from, the internal revenue laws and its officers, as if they nor either of them existed. We therefore insist that the provisions of sections 14, 16, 38, 43 and 45 of the Act of 1866, should not be held to apply to the *res*., and that the 1st, 2d and 3d counts must fall, having no statute to support them.

III. The 25th section of the act of March 2d, 1867, 14 statuet , page 483, declared spirits forfeited for omitting to do any act required by law, provided that proceedings to enforce the forfeiture be commenced within twenty days after seizure. The articles were seized, as stated in the libel, March 18, 1867, and proceedings to enforce the forfeiture was commenced April 16th, 1867, date of filing the libel, more than twenty days after the seizure was made. Henderson's Tobacco; 11th Wallace, page 653.

IV. The decree of the court below was for the appraised value of the 199 barrels of whisky, (less 3 barrels short,) with interest on that sum from the 21st of July, A. D. 1868.

The *time* from which the interest was computed we assign as error.

If we take the decision in the case of the Diana—3d Wheaton, 58—as the correct rule on that subject, the court will observe that, in the case at bar, there are two decrees of condemnation in the District Court; one was entered July 21, 1868—see transcript, page 30—the other, and final decree, was entered February 26th, 1873—see transcript, page 34. We contend that interest should have been computed from the date of the latter final decree, and not from the former; because, in the former

decree, the appraised value was not ascertained or determined by the court; no money ordered to be paid by or to any one; no costs awarded; no appeal could lie from it; no final process could issue. It was not a final decree in any sense, and should more appropriately be termed an interlocutory order than a decree. If the claimant or his stipulators for value had desired to discharge themselves, they could not have done so by paying the appraised value into the registry of the court, nor to the clerk thereof. Such payment and receipt from the clerk would not have released them from liability, as there was no decree of the court ascertaining the amount, nor to whom it should be paid; and until the libellant had placed herself in condition to demand and receive the money, and thereby have placed us in default, the claimant did not legally become liable for interest. The latter decree was appealed by the claimant to the Circuit Court, and his appeal made good to the extent of reducing the former decree, $987 69. We therefore insist that if any interest was allowed, it should have been computed from the date of the latter decree, to-wit: February 26th, 1873.

In the case of the United States vs. 100 barrels of whisky, No. 348, the decree of the court below was for the appraised value of the whisky, with interest thereon from the 1st day of July, A. D. 1868, which was erroneous in this:

1st. The time from which the interest is computed is erroneous.

2d. The sum adjudged is excessive, and not warranted by the facts.

Our argument, just presented on the same question, in

case No. 347, we apply to the first error assigned. As to the second error assigned, we say:

2d. The return of the Marshal on the delivery order is evidence of the delivery of 55 barrels, and no more—see transcript, page 7.

The Marshal had no power or authority to receive or pay over money to any one; and his statement that he paid over the money to claimant in lieu of the 45 barrels short is not sufficient evidence of that fact, and should not be held to bind the claimant. Elliott vs. Pearl; 10 Peters, 412.

The truth is, the 45 barrels, if ever seized, had been spirited away, (as the three barrels had been in the other case,) and whether this had been done by the seizing officer, and before the libel was filed, or by the Deputy Marshal, who made the return on the writ of seizure, or by persons having custody under either of them, and with their connivance, is left to conjecture. The Marshal's return should have been what its legal effect really is—to-wit: That he delivered fifty-five barrels, so much, and no more.

Whether the claimant accepted the money or not, we do not think a matter of any importance. If he did, it was under a kind of duress; for the court was wholly unable to have its order obeyed in the three barrel defalcation, as the record shows; and we think the honor of the Government and dignity of the Judiciary of too much importance to have them called in question by an order ratifying or countenancing such conduct on the part of its officers.

We therefore respectfully submit that the decree for

the appraised value of the 45 barrels short was excessive and unjust.

These whisky defalcations indicate the rapacious and demoralized character of government officials, as well as the unsettled state of society and morals down South at that time; and while we do not plead this in justification of the claimant, and ask indulgence therefor, yet we do insist the libellant should be held to the strict rules of law and evidence when she claims a forfeiture for trans actions originating at that time and under those circum stances.

V. WE RESPECTFULLY SUBMIT THAT A DECREE OF CONDEMNATION CANNOT BE RENDERED, BECAUSE NO CAUSE OF FORFEITURE HAS BEEN SET OUT IN THE LIBEL.

It is a well established rule in Admiralty that a libel for a forfeiture must be particular and certain "in all the material circumstances which constitute the offence." The brig Caroline vs. The United States; 7th Cranch, 496, Admiralty Rule, No. 22. A statement of the offence with substantial certainty must be required in every court where justice is the object, and is not rendered unnecessary by reference to a penal statute, and a general allegation that it was violated. The schooner Hoppet and Cargo vs. The United States; 7th Cranch, 387.

It is quite difficult to write a charge of any kind against whisky and fail to set out *some* offence under the statute. For if a count is drawn on any one clause or section of the statute, it matters not how far or in what direction it may miss or fail to set out the particular offence intended—and that may occur, with a careful pleader—the surprise is in the fact that it should not lodge on and set out an equally fatal offence under some other clause

And however strange and incredible it may be, yet we respectfully submit that the libel in this cause presents just such a literary phenomenon.

The first count is said to be based on the 45th section of the Act of 1866, and a seizure for a violation of any provision of that section would throw the burden of proof on the claimant, that the offence defined in that section has not been set out, in the first, or any other count of the libel, nor in the whole, taken as one, is apparent, on examination and comparison of the counts in the libel with the section, we can with safety admit the charge in the first count to be true, and yet claim a decree in our favor, because the articles may have been "removed otherwise than into a bonded warehouse, without payment of the tax," and not be subject to forfeiture, for the purpose of exportation, or being rectified, or redistilled, or canned, or put into other packages, or in transit for any of the purposes named. Act of July 13, 1866, sections 40 and 41.

The tax was not absolutely required to be paid before removal from bonded warehouse until the Act of July 15th, 1868—Statute, page 34—and the articles were seized more than twelve months before the passage of the act. The penalty for "fraudulently evading, or attempting to evade, the payment of tax, *in any manner whatever*, is double tax, to be assessed and collected as in case of other tax, and a forfeit of $500 for each cask," etc. Act of July 13, 1866, section 38.

If any part of the charge contained in the second count is based on the 14th section of the Act of 1866, a comparison of the count with that section and the judicial interpretation given the section in the case of Henderson's distilled spirits—14th Wallace, 44—shows the offence

therein defined is not set out in the second count; if based on the 15th clause of the 9th section of the Act, or if on the second section of the Act of March 7th, 1864, it is still very far from setting out an offence under either.

So much of the 36th section of tht Act of 1868, and of section 3333 Revised Statutes, as reads thus: "In respect to which the owner, etc., shall have omitted to do any act required to be done, or shall have or done or committed an act prohibited in regard to such spirits," etc., should not be construed as constituting and independent substantive offence; but if so construed, it could not avail the libellant, because, first, the act was passed long after the articles were libeled; second, there is no penalty attached. The same can be said of the charge, "fraudulent and illegal branding," with this addition—that the latter has not yet been declared an offence by statute; and if we could or should plead guilty to the charge, this court could not enforce a penalty, when none had been declared by Congress.

If the court should consider that "fraudulent and illegal branding" is of itself an offence against the laws of the United States, it would be a liberality extended to the libellant, but seldom, if ever, granted in cases of this kind, and would go to the verge of impugning a vital and fundamental rule adopted for the protection of the citizen and the advancement of justice; for if the averment be anything more than the conclusions of the draughtsman of the count, derived from a state of facts not set out, the circumstances and proof in the cause show that it was eminently well calculated to mislead the claimant as to the particular charge he would be expected to rebut by his proof. There are but three words in the

four counts indicating, and that quite remotely, the cause for which a forfeiture would be ultimately claimed. The articles were seized to await evidence of the payment of the tax. See the receipt of R. B. Stapp, transcript page 13. The customhouse brand placed there by H. M' Field, the inspector's brand placed there by J. C. Manseur —transcript, page 12—neither of them were "fraudulent and illegal," nor could the charge have had reference to the brand "tax paid," as it was not known to be on the barrels when seized, nor when libel was filed; in fact, the supposed absence of that or such a brand, was the cause of seizure; then there was no evidence showing the shipper's marks were other than what they purported to be—genuine. The proceedings show that the testimony of libellant's witnesses vindicated the articles from every specific and substantial charge set out against them; and we do think the court would be fully warranted by the law and facts in presuming that, if the libellant at the outset had specified at least the particular mark out of the number on the package, (5,) which he deemed to be illegal, the claimant could and would then, when the transaction was fresh, have produced proof in full explanation of the matter.

The claimant construed the charge as having reference to the customhouse brands, as they were the only brands required by law to be on the barrels, and this was a reasonable construction of the charge, when we note the manner in which it is made, and bear in mind that the absence or presence of the brand now complained of was a matter not material to the safety or innocence of the articles. On the importation of the articles the import laws applied both as to the mode of its introduction and withdrawal from the customhouse for consumption. The

customs brand and documents were what was required to vindicate it. Their presence alone was a vital necessity whenever they should be seized, and the absence or presence of every brand required by internal revenue laws, was neither material nor important to the articles; and, as a matter of course, when a "fraudulent and illegal branding" was charged against it, the claimant's mind and attention was directed, and very properly so, to a brand, the absence or illegal use of which would jeopardize the safety of his property, and not to something that was immaterial to him or the Government, and not to a trade mark, or brand placed there by Mexican revenue officials, in which he had felt no interest, and never knew of their existence until proved to have been there by the libellant. There was nothing in the evidence to indicate the particular brand complained of; for the libellant's own witness testified as to all five brands and marks.

We recognize the propriety of the rule laid down in "The Quicksteps," 9th Wallace, 670 that in a suit betwixt private parties, an omission to state some facts which prove to be material, but which cannot have occasioned any surprise to the opposite party, will not be allowed to work an injury to the libellant; but we claim that the ambiguity of the terms used in making the charge, and the libellant omitting to state the particular brand, or mark, illegally used, or other material facts which constitute the offence, for which a forfeiture would be ultimately claimed, did surprise and work us harm, and the pleading and facts disclose such a state of ~~the~~ case as shows the charge, as made, may have, and was eminently well calculated to surprise and mislead a prudent man as to the particular brand or mark he was called on to explain,

and the true nature of the charge he had to defend; and this we think the only proper test by which to ascertain if a party had been surprised by the manner of his adversary's pleading.

If the charge, "fraudulent and illegal marking," is drawn on the latter part of the forty-third section, "He shall forfeit," etc., the forfeiture is limited and qualified, and should be operative only while in the hands of the person committing the offence. To support a forfeiture under that section, it should appear by pleading and proof, first, that the articles are so *branded;* second, by a person knowing the tax was not paid; third, and the decree would effect no one other than he who did the act. If drawn on the thirty-eighth section, it should appear from the pleading that an inspector's brand and plate, or a counterfeit or spurious brand and plate were used with fraudulent intent.

If, on the 16th section, it should appear from the pleading, the branding was in violation of the provisions of that section, whatever they may be, the offence defined in the first clause of the 16th section consists, in fact, that some one did sell a barrel branded, then empty, or then containing anything else than the contents which were therein when lawfully branded, so as to show the contents or intended contents thereof, have been duly inspected; or, etc., whether the branding was "fraudulent and illegal," or otherwise, is not material, and therefore constitutes no part of the offence.

2. The offence defined under the second clause of the section consists in the fact that some one did make, or produce a barrel branded then empty, or then containing anything else than the contents which were therein when lawfully branded, so as to show the con-

tents, or intended contents thereof, have been duly inspected; or, etc., whether the branding was "illegal and fraudulent," or otherwise, is not material, and therefore constitutes no part of the offence.

3. Some one did brand a barrel then empty, or then containing anything else than the contents which were therein when lawfully branded, so as to show the contents, or intended contents thereof, have been duly inspected; or, etc., under this clause, "the branding a barrel for the purpose stated, and in the condition stated, are the two ingredients which constitute the offence; and the branding a barrel in any other condition and for any other purpose than those stated in the statute, however "fraudulent and illegal" it otherwise may be, yet it would not constitute an offence within the purview of the section of the Act now being discussed. The legal effect of the averment, "were fraudulently and illegally branded," so far as it relates to setting out an offense under this section is, that they "were branded," and there it began and there ended.

And it should appear the tax had not been paid, otherwise no presumption could arise that the branding was with knowledge, intent or design, "fraudulent or illegal." Yet no such material averment is found in the 21 or 31 counts.

If the charge, "illegal and fraudulent branding," had been the only charge contained in the libel, or if it had been set out in a separate and distinct count, though no such offence is defined in any statute of the United States, yet in such a state of the case it might have been negligence on our part in not excepting to its sufficiency and calling on the court to require the libellant to set out some specific offense, at least the particular brand

he objected to. But it is not only obnoxious to the objections, that it does not set out any offence, or a part of one—that it is vague, indefinite and uncertain—the conclusions of law, derived from a state of facts concealed in the breast of the pleader—but more—set out as it is, coupled with serious and weighty charges, the proof of which would be fatal to the articles, and though not intended, it had the effect to lull our suspicion, stifle inquiry, quiet apprehensions of any danger lurking under what, to our comprehension, was but little, if anything more than the pen flourish of a heated and zealous pleader; and we do insist that the charge as set out coupled with the evidence in the case, if permitted to work our ruin, was nothing but a snare, and that any one, (not a sharper or shyster,) on the one hand, nor a a man of great research and rare legal skill and acumen on the other, but one of average ability and care, such as conduct fully five-sixths of the business of our courts, was liable to be misled and deceived thereby; and if the court should hold the burden of proof to be on the claimant to show that no fraud was committed, that of itself would be the strongest argument that could be adduced (however cogent others may be) why the court should refuse to recognize and wholly ignore the existence of any count or charge drawn in total disregard to its 22d Admiralty rule; and of the rule laid down in the brig Caroline—7th Cranch, 496—for it is manifest that, if the claimant should be left to conjecture the offence charged, and should guess the wrong one, (as it appears we did in in this case,) his property will always be condemned, however innocent it may be, and however ready he might be to show it, if the offence had been plainly and distinctly set out.

We were verbally informed for the first time, seven years after the libell filed at the trial before the Hon. Justice Bradley, and we now know the offence for which a conviction would be claimed; to this we say—1st. An oral declaration of the offense at the trial is not such as we are entitled to and as the law requires. 2d. The introduction of material evidence of any character at this stage of the cause, if the court should permit it, would be liable to grave suspicions. 3d. Evidence touching brands is transitory in the extreme, and persons who may have given information have moved off and passed away, and we could not at this day find witness who could testify anything in regard to the matter, much less could we find one who could testify concerning brands or part of brands in which they have no interest.

But let us suppose the barrels to have been fraudulently and illegally branded, it does not follow the articles would be forfeited; for the 38th section declares that, if any inspector or assistant inspector shall place any false or fraudulent mark on any cask, &c., he shall be punished; but the spirits would not thereby be forfeited; yet if done by such a person, that would be a fraudulent and illegal marking; and as the libellant has failed to set out in the 2d or 3d counts the particular brand illegally used, or that it was used by a person other than an officer, or the time, place or intent with which it was done, or that an inspector's brand or plate was used, or a counterfeit or spurious brand, or that it was done by a person knowing the tax was not paid, or that the tax was not paid, and innocence being always presumed until the contrary appears in the pleading and proof, we claim a decree on the law and testimony.

The construction we give the 43d section is, that there

are three causes of forfeiture therein set out. The 3d cause of forfeiture, we take it, refers to the brand "rectified," in the preceeding paragraph; and as there was no proof that brand was on the barrels, we dismiss the subject with the remark that the two last sentences of the 43d section was repealed March 2d, 1867, 14 statutes, page 475, which was previous to the seizure of the articles—nevertheless, there was a saving clause in the repealing statute.

Our courts have heretofore uniformly refused to deprive any person of his property by a fine, penalty or forfeiture based on an offence other than those plain, simple and well defined offences set out in our statues; and the rolling up the act of 1866 covering over 75 pages into one grand charge of "fraudulent and illegal branding," and hurling it at the articles, indicates a want of temper, and not that the statutes are deficient. And we insist there is no good reason why the court should overthrow some of the oldest cannons of the law or seek some new and novel construction of a statute to convict the res; for laws of the United States, properly invoked, are amply sufficient to protect the revenues of the government in any state of case—at any rate have thus far proved efficacious. And if the proof was clear that some one did give, sell, purchase, and receive the articles, they being in the statutes defined by the first clause of the 16th section, or that they had been FRAUDULENTLY IMPORTED, or that they were or had been guilty of any other offence defined by the statute, not charged or set out in the libel, this court would not convict. (1st Abbott 153. Olcott's R. 511. 7 Crauch. 389.

VI. The libellant should not be permitted or directed to set out any specific offence at this time: because:

1st. It is a well-established doctrine of this court, that no amendment setting out a new substantive offence will be

allowed in the appellate court. Houseman vs. North Carolina, 15 Peters, 40.

2. Nor in any court after the statutory bar is complete. Schooner Harmony, 1st Galleton, 123.

3d. This court has never yet held that an amendment, other than those merely formal, would be permitted after the offence had been barred by the statute, and the contrary has been held by the courts of the highest respect and last resort. 4th Day, Conn. 37; 12th Conn. 101, 106.

4th. It would be a dangerous and unsafe precedent to permit amendments, other than those of a formal nature, after the lapse of so great a length of time; in this case, after the bar is complete—when no good reason can be assigned why it was not previously done, and it might shift the burthen of proof and compel the introduction of new proof. If an amendment is permitted at all it should be subject to the general rule, which is, "that the amendment should not prejudice the other party, and that it cannot relate back to the time of the commencement of the suit, but must be confined to the time of filing the amendment." 1st Daniel's Chancery of Practice, page 402, 403.

This court has not uniformly, or at all times, allowed or directed amendments to be made when the offense was not outlawed. See the Hoppett vs. the United States, 7th Cranch, 389.

We submit that no decree can be entered for want of jurisdiction in the District Court, because—

VII. The record discloses the fact that the decree rendered by the Hon. J. C. Watrous was taken to the Circuit Court on writ of error, and however improvident it may have been to grant the same, it had the effect to remove the cause to the Circuit Court, and there it would remain until it should please the Circuit Court to dismiss it; and

so long as the cause remained in the Circuit Court the District Court had no power or authority to make any order or decree in the matter The records of the Circuit Court, in which no order dismissing the same appears, is superior to,and overrides any inference ~~superior~~ that may be drawnfrom the recital made in the decree of the District Court. Thompson vs. Whiteman; 18th Wallace, 456.

VIII. While we have pointed out a few legal obstacles in the way of obtaining a condemnation under the present state of pleading, and by no means waive any right we may have thereunder, our chief reliance for an acquittal is on the merits of the case, and the entire absence of any legal testimony to establish guilt.

The Hon. J. C. Watrous was the only Judge before whom the witnesses testified; and the decree of condemnation rendered by him, though simply interlocutory and *not final*, is entitled to all the respect and weight that should be given to the order of any Judge in the first instance, who *saw* and *heard* the witnesses testify; but we claim that the force and weight of this decree is very much weakened, if not entirely destroyed, in this—that he never rendered a final decree against us.

The Hon. Amos Morrill rendered a *final decree* in the cause *pro forma*, and without any reference whatever to the evidence or merits of the case, as he viewed the interlocutory order made by Hon. J. C. Watrous in the light of a "verdict of the jury," on which he entered up a final decree. The Hon. Justice Bradley, as we understood, based his decree on the charge of "illegal and fraudulent branding," as sustained by proof that the spirits were exported prior to the passage of the Act of 1866, and had been reimported subsequent to the pas-

A with brandy required by 43 Section of act of 1866. on Rem.

sage of the Act, February 12, 1867. This, in point of fact, took us unawares and at a surprise, and we have endeavored to show that was its legal effect, and thereby we had no legal opportunity to investigate the matter, cross-examine witnesses, and otherwise make good our defense, and deprived the court and claimant of such evidence and argument as may have been produced if the charge had been plainly set out, or reasonably certain and accurate.

We therefore claim the full benefit of the rule, that "the right of appeal to this court is a substantial right and not a shadow; it involves examination, thought and judgment." The Ariadne; 13th Wallace, 479. And we suggest that the old rule, if not wrong in principle, is and should be held modified, because the jurisdiction and duties of the District and Circuit Courts have been greatly enlarged and increased without a corresponding increase in the Judiciary, and the Judges exercising Circuit Court powers are not physically able to bestow that thought and care on causes that is desirable, or that they would do if time permitted.

All of which is respectfully submitted.

Wm P. Ballinger

Proctor for Claimant.

U. S. Supreme Court.

OCTOBER TERM, A. D. 1876.

Nos. 147 and 148.

199 Barrels of Whiskey and 100 Barrels of Whiskey, C. Andre, Claimant,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

REPLY OF CLAIMANT.

J. M. BURROUGHS,
Proctor for Claimant.

National Republican Printing House.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1876.

Nos. 147 and 148.

ONE HUNDRED AND NINETY-NINE BARRELS OF WHISKEY AND ONE HUNDRED BARRELS OF WHISKEY, C. ANDRE, CLAIMANT,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

Reply of Claimant.

My learned brother has not carefully read my brief, otherwise he would not say it was a fact *not controverted* that the spirits were exported *without the payment of the internal revenue tax.* The action is to enforce a forfeiture, and not to collect taxes or duties, and we contented ourselves with the testimony of O. Aubert, that "the proper custom-house documents were made and passed at the custom-house at Brownsville, by R. L. Robinson, collector." (Record, page 12.) And further, "that said importation was publicly made, without concealment, and in the customary manner as required at the custom-house of the United States. (See Record, page 16.) And of J. S. Mansur, that he was ordered to brand said whiskey with the custom-house brand, to wit, "U. S. Inspection District, Brazos Santiago," which he did, (Record,

page 13,) which "was evidence that the articles had been lawfully imported." (41st section, act of 1799.)

We have never regarded the permit-bond and cancellation certificates matters material in the trial of the case presented in the libel of information, and though excepting to their introduction as evidence, we have treated them as evidence in our statement of the case and argument. Hence, we said the articles were exported in 1864 and 1865, some of them more than *two years* before their re-importation. And the statement of Hall, (a witness for the libellant,) in his deposition taken *de bene esse*, (page 11,) that they "were shipped from New Orleans on the 20th of June, A. D. 1866," we simply supposed was a mistake of his; for whether exported June 20, 1866, or in 1864 and 1865, it was the same, as either date was anterior to the passage of the act of July, 1866.

There are two causes of forfeiture, or offenses, defined in the 45th section of the act of 1866. Each offense consists of three ingredients. Neither offense is charged against the goods in the libel of information; but if one or both offenses had been charged, the burden of proof would have been on the claimant *only* in case the Government had elected to waive the forfeiture and *seize* the goods, and proceed according to the provisions of law in relation to distraint. The facts show the goods were not guilty of either offense. Now, if we will confound the ingredients constituting the two offenses defined by that section, and charge the goods with an infraction of a part of each, but all of neither, adopt the rule of evidence applicable to proceedings on a *seizure* by way of *distraint*, and hold the phrase "internal revenue tax and duty" to mean a "duty" on imports "*when required by the law and facts*, we then have the case presented by the evidence, argument, and first count in the libel, based on the 45th section of the act.

The brand designated in the first part of the 43d section of the act of 1866, we do not understand was evidence the tax had been paid; that was not its purport or object; nor was it evidence the goods were of American manufacture.

Field, collector of customs at Brownsville, and Stapp, collector of internal revenue at Galveston, testified as to the brand complained of, (see Record, page 25,) yet neither of them intimated they regarded it as evidence that the tax had been paid, or that the goods were of domestic manufacture. The articles passed the collector of customs at Brownsville on the New York and New Orleans customs papers, which were regular, together with Andre's bond; and Aubert, who acted for the collector, was not influenced by the brand, for he says *he never saw the barrels*, and did not know what brand was on them. So here are *three* Government collectors, witnesses for the Government, neither of whom intimate that their action was influenced in any way by the brand complained of.

The articles may have been placed in about fifty different positions, fifteen under the impost laws and thirty-five under internal revenue laws, (besides those under the Indian intercourse acts,) which would subject them to forfeiture; and if they can be condemned for an offense not charged, or for one charged and not proved, or for one neither charged or proved, then it would make no difference whether they were condemned for the offense defined in the 42d section of the act of 1866, or because the collector did not sign the permit or landing certificate. All we claim for the articles is, that until Congress shall see fit to prohibit their manufacture, importation, and use, *in toto*, that they shall not be seized, or, being seized, they shall not be condemned because they are *whiskey*, and that this shall only be done by *due course of law*.

The Record does show, that on the 14th March, A. D. 1867, Stapp received from us 200 barrels. (Rec., page 18.) That but 196 barrels were ever returned to us. (Rec., page 7.) That of the 100 barrels taken from us at Indianola in cause 148, 45 barrels were lost. (Rec. in Cause 148, page 7.) That Stapps' charges on 196 barrels, for 5 months, were $452.67. (Record, page 29.) The brand complained of is not referred to in the *entry* or *bond*. The officer seized and held the goods more than twenty days before proceedings to enforce the

forfeiture were begun. That G. P. Douglass was the informer as stated in the libel, though Stapp had seized and held the goods for more than a month. That the warrant of seizure was executed by Douglass, dep. (Page 2.) That Mansur, who inspected and branded the goods, saw not more than 100 barrels branded as complained of. (See Record, page 13.) All this, in connection with the fact that the informer at that time had half the proceeds of goods condemned, may induce the court to believe the illegal brand on the goods, if any was there, was put on by an officer, or some one interested in procuring the forfeiture; at any rate it is a good reason why the libellant should be held to the strict rules of law and evidence to maintain her cause.

The delay in prosecuting the cause to a final hearing is in part owing to the fact that, soon after the cause was heard for the first time, Hon. J. C. Watrous was paralyzed, and until he was retired by Congress and Hon. A. Morrill appointed and qualified, we had no regular terms of court, and in part from the press of business in the court.

We intended and claim to have substantially complied with rule 21; nevertheless, we recapitulate and do now assign as error—

I. Admitting in evidence the entry, bond, and cancellation certificates. See pages 4 and 5 of brief.

II. The decree of the court below was contrary to the law and facts, as appears on pages 5 to 17 of our brief.

III. Because proceedings to enforce the forfeiture were not commenced within twenty days next after the goods were seized, as appears on page 17 of brief.

IV. The decree below was excessive, as appears on pages 17 to 20 of brief.

V. The facts which constitute an offense that would subject the goods to forfeiture is not set out in the libel, as appears on pages 20 to 29 of brief.

All which is respectfully submitted.

J. M. Burroughs,
Proctor for Claimant.

In the Supreme Court of the United States.

OCTOBER TERM, 1876.

199 BARRELS OF WHISKY AND 100 BARRELS OF WHISKY, CHARLES ANDRÉ, CLAIMANT,
vs.
THE UNITED STATES.
} Nos. 147 and 148.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

Brief for the United States.

In the Supreme Court of the United States.

OCTOBER TERM, 1876.

199 BARRELS OF WHISKY, AND 100 barrels of whisky, Charles André, claimant.
vs.
THE UNITED STATES.
} Nos. 147 and 148.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

Brief for the United States.

This whisky, claimed by Mr. André, was seized April 17, 1867, upon a warrant which issued upon a libel filed the preceding day, alleging, as causes of forfeiture, 1st, that at Galveston, on the 18th day of the previous month, "the said distilled spirits, being subject to the payment of an internal-revenue tax and duty before the same should be removed otherwise than into a bonded warehouse, were removed otherwise than into a bonded warehouse without the internal-revenue tax or duty thereon chargeable by law having been paid."

"2d. For that no *lawful* or *genuine* inspector's brand was ever put upon said distilled spirits, and said spirits were removed for sale in fraud of the law, and with intent to evade payment of the duties and taxes thereon chargeable, and were fraudulently and illegally branded and marked."

"3d. That the said barrels of distilled spirits when found by the said collector had never been inspected, gauged, proved, or marked, as required by the statute in such case made and provided, *and were fraudulently and illegally marked and branded.*"

The foregoing charges are minuted in the margin of the record as referring, to sustain the first, to 14 Stats., 163, § 45, and as to the second to same act, § 43. The third charge is based upon the statutes generally, no marginal reference being made. (Record 7. 8, folios 20, 22.)

The monition and notice designated May 6, 1867, as the return-day at which time André appeared and filed his claim and answer, setting forth a purchase by him of the whisky in open market at Matamoras, Mexico, in February, 1867, and its subsequent importation into the United States at Brownsville, collection-district of Brazos de Santiago, Texas, openly, and in the day-time, by ferry-boat plying between these two places, the same being merchandise which he might lawfully import, "*subject to the payment of duties fixed by the laws*," &c.; that they were landed by permission of the collector of the port of entry; were entered by him, (André,) who "by bond secured the duties thereon according to law," obtained the customary certificate to this effect, and sent the whisky forward to market. (Record 9.)

May 27, 1867, the district attorney amended the libel by adding a charge that the whisky was liable to a duty of $2.50 a gallon, under act of June 30, 1864, (c. § 2, 13 Stats., 202,) and of March 3, 1865, (c. § 2, 13 Stats., 491.) Those sections of the internal-revenue statutes which are supposed to affect the case are printed below, in whole or in part, so far as their provisions are deemed

applicable. At the hearing, it was shown that the liquors were exported from New York and New Orleans in 1864–'65. Upon their re-entry, a bond for $76,280, double the value of these goods, was given the United States, with condition to produce certificates that no drawback allowance was made at the time of the original importation. Such certificates were subsequently procured, and thereupon the bond was canceled. Exception was taken to the admission in evidence of this bond and of the certificates, for reasons stated in appellant's brief and hereinafter discussed. It does not appear that any internal-revenue tax was ever paid upon these liquors prior to their exportation from this country. Though shipped from New York and New Orleans in 1864–'65, all of the barrels were marked "manufactured prior to 1st September, 1866," as required by the act of July 13, 1866, and all but fifteen or twenty barrels were stamped "tax paid," but no regular, genuine internal-revenue inspection-brand, as required by our laws, and *proved to be such*, was found upon any of them. The heads of the barrels were so dirty, that the words "tax paid" were only noticed when the barrels were washed prior to being marked and identified by the court as the *res* seized in this case.

Decrees of forfeiture were entered first in the district court, and subsequently in the circuit court, and the cause then brought here by appeal.

STATUTES.

The act of July 13, 1866, c. 184, contains the following sections, portions of which will be referred to in argument. They are found in 14 Stats., 160–3.

SEC. 40. *And be it further enacted*, That any distilled

spirits which have been inspected, gauged, proved, and marked by the inspector, according to the provisions of law, may be removed without the payment of tax from the bonded warehouse owned by the distiller, under such rules and regulations and upon the execution of such transportation bonds or other security as the Commissioner of Internal Revenue, subject to the approval of the Secretary of the Treasury, may prescribe, and may be transported to any general bonded warehouse used for the storage of distilled spirits, established under the internal-revenue laws and regulations, after having been branded as follows: "U. S. bonded warehouse ——— district, ———; for transportation to ——— district ———," (inserting in each case the number of the district and name of the State,) and immediately after the arrival of such distilled spirits at the district of the collector to which it has been transferred it shall again be inspected and placed in a bonded warehouse; and the tax shall be paid on the difference between the number of proof-gallons as stated in the bond given at the place of shipment and the number received at the warehouse, less the allowance for leakage, as established by the regulations of the Commissioner of Internal Revenue; and, except for actual destruction by unavoidable accident, by the elements, or by the public enemy, no other allowance for loss shall be made; and any distilled spirits entered in a general bonded warehouse shall be subject to such rules and regulations as the Commissioner of Internal Revenue may prescribe, and be chargeable with the same costs and expenses, in all respects, to which imported goods deposited in public store or bonded warehouse may be subject, and shall be in charge of a store-keeper to be appointed by the Secretary of the Treasury, who, with the owner and proprietor of the warehouse, shall have the joint custody of all the distilled spirits so stored in said warehouse, which shall be at the risk of the owner of the said spirits; and all labor on the same shall be performed by the owner or proprietor of the warehouse, under the supervision of the officer in charge of the

same, and at the expense of said owner or proprietor. And the same fees shall be paid for the execution of all papers, instruments, and documents relating to the exportation of any spirits or other merchandise as are charged to exporters for like services in the custom-house; and all expenses and services required in the removal, transfer, and shipment of the same for export shall be paid by the owner thereof: *Provided*, That any distilled spirits may be withdrawn from a bonded warehouse after having been inspected and gauged by the proper officer, and after the payment, to the collector of internal-revenue for the district in which the warehouse is situated, of the tax imposed by law; and, when so delivered, shall be branded, "United States bonded warehouse, tax paid;" or may be removed from said warehouse without the payment of the tax, for the purpose of being exported, or for the purpose of being rectified, or redistilled, canned, or put into other packages, after the quantity and proof of the spirits to be removed have been ascertained and inspected, as required by law, under such rules and regulations, and the execution of such bonds or other security, as the Commissioner of Internal Revenue, subject to the approval of the Secretary of the Treasury, may prescribe; but such removal of bonded spirits for the purpose of being rectified, redistilled, or put into other packages shall be allowed but once on the same spirits; and all spirits so removed for redistillation, rectification, or change of package, shall be returned to the same warehouse, and shall again be inspected; and the tax shall be paid to the said collector on any deficiency or reduction beyond three per cent. And upon spirits removed under bond for the purpose of being redistilled, or rectified, or change of package, as aforesaid, and upon which an allowance shall have been made, as herein provided, the duty upon such allowance shall be paid, together with the taxes imposed by law upon such spirits, in case such spirits shall be withdrawn for consumption or sale, or for transportation without being exported. And no drawback shall be allowed on any distilled spirits on which the

tax has been paid; but nothing in this section shall be so construed as to prevent the manufacture in bond for exportation, without the payment of taxes, of medicines, preparations, compositions, perfumery, cosmetics, cordials, and other liquors manufactured wholly or in part of domestic spirits, as provided by law.

SEC. 41. *And be it further enacted*, That any spirits or other merchandise may be removed from bonded warehouse for the purpose of being exported upon the order of the superintendent of exports for the port whence the spirits are to be exported; and such order shall state the port to which such spirits are to be shipped, and the name of the vessel, and also the number of proof-gallons, and the marks of the package or casks; and such spirits or other merchandise shall be branded "U. S. bonded warehouse, for export," and shall be put on board of a vessel in or by which they are to be exported by an officer, under direction of the superintendent of exports, and placed under the supervision of an officer of the customs, after a bond with good and sufficient sureties shall have been given in such form and containing such conditions as the Commissioner of Internal Revenue, subject to the approval of the Secretary of the Treasury, may prescribe. And such bond shall be canceled upon the presentation of the proper certificate that said spirits have been landed at the port named in said bond, or at any other port without the jurisdiction of the United States, or upon satisfactory proof that after shipment the spirits have been lost. And at any port where there shall be no superintendent of exports, all the duties and services required of superintendents of exports and drawbacks shall devolve upon and be performed by the collector of internal revenue designated to have charge of exportations.

SEC. 42. *And be it further enacted*, That any person or persons who shall execute or sign any false or fraudulent bond, permit, entry, or other document required by law or regulations; or who shall fraudulently procure the same to be executed, or who shall connive at the

execution thereof, by which the payment of any internal-revenue tax shall be evaded, or attempted to be evaded, or which shall be executed, or purport to be executed, for the purpose of placing in, or withdrawing from, any bonded warehouse any spirits or other merchandise for any purpose whatever, or which shall in any way be used or attempted to be used in fraud of the internal-revenue laws and regulations, on conviction thereof shall forfeit all property in such spirits or other merchandise to which such instrument relates, or purports to relate, and shall be imprisoned for a term not less than one nor more than five years, at the discretion of the court.

SEC. 43. *And be it further enacted*, That any person owning any distilled spirits intended for sale, manufactured prior to the time when this act takes effect, exceeding fifty gallons altogether, shall notify in writing the collector of the district wherein such spirits may be stored, held, or owned within sixty days thereafter, to gauge and prove the same; and upon the receipt of said notice the collector shall cause said spirits to be gauged and proved, and the casks or packages containing the same to be marked by the inspector in the following manner:

Manufactured prior to
———————— 186 .
————————, inspector,
——— district.
Inspected ———, 186 .

And no spirits so manufactured, held, or owned shall be gauged, proved, or marked in any cistern or other stationary vessel, but shall be gauged, proved, and marked only in barrels, casks, or packages in which the same shall have been placed; and the quantity held in leach-tubs shall be estimated by the inspector, and when drawn off into packages shall be gauged and marked as herein provided. Upon the receipt of the return the collector shall immediately forward to the Commissioner of Internal Revenue a copy thereof; and any person

holding or owning such spirits, and refusing or neglecting to notify the collector as in this section provided, shall forfeit the same and pay the sum of five hundred dollars, to be collected in the manner provided by law for the collection of other penalties. No distilled spirits on which the tax has been paid shall be stored or allowed to remain on any distillery premises under the penalty of a forfeiture of all spirits so found. And all spirits, after being removed from the original package in which they were inspected and gauged, into other packages for purposes of rectification, redistillation, or change of proof, shall again be inspected and gauged and properly branded; and the absence of an inspectors' brand shall be taken and held as sufficient cause or evidence upon which any spirits so found may be forfeited. And any person who shall change the character of any spirits, either by rectification, mixing, or otherwise, after they have been duly inspected and marked as hereinbefore provided, and place the same in other packages for consumption or sale without first stamping or branding upon such package, in such manner as the Commissioner of Internal Revenue may prescribe, the word "Rectified," shall forfeit such spirits, and the same may be seized by the collector or deputy collector of the district where such spirits may be found, or by such other collector or deputy collector as may be specially authorized by the Commissioner of Internal Revenue for that purpose. And any person who shall so brand any package containing spirits, knowing the taxes thereon have not been paid, shall forfeit such spirits, and shall be deemed guilty of a misdemeanor, and upon conviction shall be imprisoned for not more than two years, at the discretion of the court.

* * * * * * *

SEC. 45. *And be it further enacted*, That any person who shall remove any distilled spirits from the place where the same are distilled otherwise than into a bonded warehouse, as provided by law, shall be liable to a fine of double the amount of the tax imposed thereon, or to imprisonment for not less than three

months. All distilled spirits so removed, and all distilled spirits found elsewhere than in a bonded warehouse, not having been removed from such warehouse according to law, and the tax imposed by law on the same not having been paid, shall be forfeited to the United States, or may, immediately upon discovery, be seized, and, after assessment of the tax thereon, may be sold by the collector for the tax and expenses of seizure and sale. And proceedings upon such seizure shall be according to existing provisions of law in relation to distraint, and in conformity with any regulations which shall be made by the Commissioner of Internal Revenue, and the burden of proof shall be upon the claimant of said spirits to show that the requirements of law in regard to the same have been complied with. And any person who shall aid or abet in the removal of distilled spirits from any distillery otherwise than to a bonded warehouse, as provided by law, or shall aid in the concealment of such spirits so removed, shall be liable, on conviction thereof, to a fine of not less than two hundred nor more than one thousand dollars, or to imprisonment for not less than three nor more than twelve months. And any person who shall remove, or shall aid or abet in the removal of, any distilled spirits from any bonded warehouse other than is allowed by law, shall be liable to a fine of not more than one thousand dollars, or to imprisonment for not less than three nor more than twelve months.

The act of July 28, 1866, c. 298, § 12, 14 Stats., 330, declares "that upon the re-importation of articles once exported, of the growth, product, or manufacture of the United States, *upon which no internal tax has been assessed or paid*, or upon which such tax has been paid and refunded by allowance or drawback, there shall be levied, collected, and paid a *duty equal to the tax imposed by the internal-revenue laws upon such articles.*"

We have made the foregoing statement, because we conceived that the brief of the appellant did not, in this respect, comply with the fourth section of Rule 21. Neither does it contain the proper specification of the alleged errors complained of precisely as there required, though perhaps with sufficient accuracy.

Following the proper order observed in claimant's brief, we will first consider the objections to the admission in evidence of the custom-house documents, in order that we may ascertain upon what foundation the decree appealed from rests.

I.

We shall briefly consider the objections in the order in which the appellant presents them, assuming that none others exist or will be considered by the court. None other that can possibly be suggested occurs to us.

1. This first objection is that these are not papers required by law to be taken or filed in the collector's office.

This objection is obviated by a reference to the statutes and Treasury regulations.

The act of March 2, 1799, § 48, 1 Stats., 663–4, expressly requires these papers and bond, *in his verbis.*

The Treasury regulations have the force of law.

In the Treasury "customs regulations" of 1857, then in force, page 153, section 244, Form No. 82, will be found these same papers declared to be requisite in case of the re-importation of domestic goods at a port other than that from which they were exported. The same form is preserved in the revised regulations of 1874, except that

in the fourth line from the bottom of the condition of the bond the word "without" is substituted for "subject to no" before the word "drawback." (See customs regulations of 1874, p. 183, arts. 374–6, Forms 93–4.) Article 798, page 377, of these regulations declares that "bonds shall not be detached from the bond-book for any purpose whatever without special authority of the Secretary of the Treasury, nor shall any blank forms be detached from any bond-book in actual use without like permission." Of course the bond-book in daily use at Brazos could not be carried to and kept at the court-house in Galveston, more than a hundred miles distant. The bond refers to the certificates, and makes them a necessary part of it. The originals not being accessible, sworn exemplified copies were admissible. It should have been noted—what will be apparent upon inspection of the bond, &c.—that the words, in the paper D, commencing near the top of folio 59, on page 21, "the below-mentioned articles were canceled this 12th day of July, A. D. 1867," &c., and ending with the signature of the special deputy collector, were written, upon that day, across the bond (probably in red ink) to indicate that it had been canceled upon the reception and faith of the accompanying certificates. The date and tenor indicate this, and that this paragraph could not have been in the bond when executed and delivered.

2. He objects, secondly, that they are immaterial, and that they are secondary evidence, while the list was accessible.

These papers were part of the proceedings, in entering these goods, required by law, and not only material, but an essential prerequisite.

These goods came from a foreign country. *Prima facie*

they were liable to duty. Andre seeks to avoid this tax by giving the statute bond and producing the certificates named in its condition, to show that they were exported without drawback. They were a material step in the transaction. If not, he could not be prejudiced, because this court sits both as judge and jury, and will decide upon such testimony as is pertinent and material.

That the originals were not accessible we have already shown.

3. The appellant denies that the collector's deputy is entitled to certify copies of records coming from the collector's office. The very name imports the duty attached to the office of a deputy. It is one *deputed* by another to perform those acts (especially *official* acts) which it is incumbent upon the latter to do personally or by substitute. Webster gives "substitute" as its synonym, and says, in an explanatory note: "It is used in composition, as deputy-collector, &c., to designate one appointed to act in place of the collector," &c.

Bouvier defines deputy thus: "One authorized by an officer to exercise the *office* or right which the officer possesses for and in the place of the latter," adding, "3. In general, a deputy has power to do *every act which his principal might do.*" (1 Bouv. Law Dict., 408, *h. t.*) In his Institutes the same author indicates the distinction between an agent and a deputy, and says: "A deputy, *being invested by law with all the power of his principal*, may do a binding act upon the latter, and sign his own name." (2 Bouv. Inst., 21.)

In Taylor *v.* Brown, 5 Cranch, 247, this court said: "The law, so far as respects the validity of the survey, considers the act of the deputy as the act of his principal," affirmed in Craig *v.* Radford, 3 Wheat., 598.

In U. S. *v.* Barton, speaking of deputy collectors, Hopkinson, J., said: "What, then, are his powers? Generally speaking, a deputy, without any limitation of his authority, would have the authority of his principal. When the law creating the appointment and office has imposed no restrictions, we can put none; we must suppose that as the permanent deputy is the substitute for the temporary officer authorized by the law of 1799, he must have the same powers and duties; that is, he may exercise and perform the functions, powers, and duties of the collector." Gilpin, 446, holding that an oath, which the statute said should be taken before a collector, might be administered by his deputy. Judge Ingersoll held the same in Schmaire *v.* Maxwell, 3 Blatch., 410, saying: "The collector has power, with the sanction of the Secretary of the Treasury, to appoint as many deputies as may be necessary. A deputy, unless restricted, is necessarily clothed with the power which his principal has." Falleck *v.* Barney, 5 Blatchf., 40.

Even if only entitled to act under certain circumstances, as in the absence of the collector, the fact that he is found exercising the right is sufficient *prima facie* evidence of his right then and so to act.

In the present instance, however, the deputy collector has certified to no copies. His name is simply found upon the sworn *exemplified* copies, just where it appears, rightfully or wrongfully, upon the original certificate, and because it is a part of such original.

4. He says that the cancellation certificates do not purport to be either originals or copies of any record. They purport to be just what their contents show them to be. They do not purport to be *certified* copies. They are proved by the oath of a witness and not by the faith

of the signature of a certifying officer. "Where the proof is by a copy, an *examined* copy, duly made and sworn to by *any* competent witness, is *always* admissible." 1 Greenleaf on Ev., § 485. Such was the course here adopted. (Record 25, folio 68.)

5. The objection to any use being made of the certificates to contradict Aubert's affidavit, filed, as counsel says, April 16, 1867, in fact May 27, 1867, (Record 15, 16,) needs no discussion.

There is no purpose to attack that affidavit. It simply says that Aubert, as entry clerk, followed a prevailing (but wholly unauthorized and illegal) custom in signing the landing-permit for these goods; that the bond just referred to was thereupon executed, conditioned to produce the *proper* cancellation certificates or to to pay the required duty; that the sureties were ample; the goods openly imported, and were branded by him under orders from the deputy collector. No doubt this is all precisely true.

We will now take leave of the claimant's objections with a suggestion applicable to nearly all of them, viz, that it nowhere appears that the admission of the papers was, at the trials below, specifically objected to for the reasons now given.

So far as these rest upon the assumption that they were but secondary evidence, that cannot be made here for the first time. It must appear to have been distinctly suggested below.

II.

Coming now to the merits:

As before remarked, these goods were imported from a foreign country; they were of a class not merely sub-

ject to duty, but which is jealously watched by the provisions of our customs and internal-revenue laws. The burden would, without special enactment, have lain upon the claimant to show that they came strictly within any alleged exception to the rule that spirits imported from foreign countries into this are liable to duty. It was an importation. It has paid no customs-duty; if it has paid an excise duty, the importer must show the fact.

In admiralty the *res* is the offender. Irrespective of any guilt or innocence of Mr. Andre in his dealings with the goods, the question arises whether, from any cause attaching to *them*, (whether also to their alleged owner or not,) they were liable to forfeiture.

1. The first article (Record 7, folio 21) is that these spirits, "being subject to the payment of internal-revenue tax and duty before the same should be removed otherwise than into a bonded warehouse, were removed otherwise than into a bonded warehouse, without the internal-revenue tax or duty thereon chargeable by law having been paid."

That these liquors were originally taken out of bond for purpose of exportation may be true; but when they were taken from Brazos "without the internal-revenue tax or [customs] duty having been paid," they were illegally removed, and were subject to forfeiture. It may be thought that the words "internal revenue" were intended to qualify "duty" as well as "tax;" but a contrary construction would be equally consistent with the ordinary use of language, and should be adopted, if required by the law and facts; for it may be urged that it was not an internal-revenue tax, but a duty of precisely equal amount that was to be collected upon this merchandise.

The phraseology of the act of July 13, 1866, c. 148, § 45, 14 Stats., 163, is that "all distilled spirits so removed, *and all distilled spirits found elsewhere than in a bonded warehouse*, not having been removed from said warehouse according to law, *and the tax imposed by law on the same not having been paid*, shall be forfeited to the United States; and may, immediately *upon discovery*, be seized and, after assessment of the tax thereon, may be sold by the collector for tax and expenses of seizure and sale." The fact that these liquors were removed without payment of tax was not discovered till the spring of 1867, when they were at once seized.

2. The next charge is that the liquors were never marked with any lawful or genuine inspector's brand, but were removed for sale "in fraud of law, and with intent to evade payment of the duties and taxes thereon chargeable by law, and were fraudulently and illegally branded and marked." (Record, 8, top.)

This specification is based upon section 38 of the act aforesaid, found in 14 Stats., 159, and the before-mentioned sections 43 and 45. The 38th section requires all distilled spirits to be inspected and branded before removal from any bonded warehouse, imposing heavy penalties for the omission, or for putting any false or fraudulent mark upon any package; and (on page 160) further provides that "Any person who shall, with fraudulent intent, use any inspector's brands, &c., * * * or who shall knowingly make or *use any counterfeit or spurious brand or plate upon any cask or package*, shall be deemed guilty of a felony, &c., * * * *and such cask or package shall be forfeited to the United States.*" The 43d section, printed herewith, states the manner of branding, and concludes, "And any person who shall

so brand any package containing spirits, knowing the taxes thereon have not been paid, shall forfeit such spirits." The language of section 45, as to the removal of spirits upon which the tax has not been paid, was quoted upon the preceding page.

It will be shown hereafter that the 42d section of this act, which punishes any person who executes or procures the execution of a "fraudulent bond, permit, entry, or other document required by law or regulations, * * * or who shall connive at the execution thereof, by which the payment of any internal-revenue tax shall be evaded, or attempted to be evaded, * * * or which shall in any way be used or attempted to be used in fraud of the internal-revenue laws or regulations, * * * shall forfeit all property in such spirits or other merchandise to which such instrument relates, or purports to relate," applies to the present case, under this specification of the libel.

The third specification makes a similar charge in more general terms.

Subsequently, the libel was amended so as to charge the non-payment of the customs duty thereon.

The facts in this case do not appear to be controverted. They are that the whisky was exported from New York and New Orleans *without payment of the internal-revenue tax*. Six months later they were re-imported, and passed the custom-house, upon a bond conditioned only to pay the duty or produce certificates that no *drawback* had been allowed upon their exportation. Such certificates were produced, and the bond, we will assume, cancelled. No provision was made for the payment of duty in case the whisky had been (as it was) originally exported without payment of the excise.

This was either caused by merely reading Section VIII, Art. 242, of the Treas. Regulations of 1857, which permits productions of this country to be re-imported free of duty, if they have received no drawback when exported, without noticing the exception as to articles subject to excise; or else it occurred from there being these spurious brands upon the barrels, indicating that the internal tax had been paid. The whole argument of the counsel for the plaintiff in error (upon pages 6 and 7 of his brief) is to the effect that the action of the collector, in admitting the articles and canceling the bond, was a conclusive judgment of an officer, designated and empowered to act judicially upon this subject, that all taxes and duties had been paid, so that the United States cannot now be heard to aver the contrary. How it is possible to sustain this position we do not perceive. The whisky was imported into Brazos, the customs officials there having no previous knowledge of the goods; such re-importation being, as the case finds, (Record 14, folio 42,) "in accordance with the entry, permit, and landing-certificate hereinafter incorporated." These papers show all the action had prior to the giving of the bond, or contemporaneously therewith and with the entry. They do not show proper action upon the part of the collector. There was no permit other than the landing-certificate, found upon page 15, top, both names being given to this paper. This permit or certificate is not signed by the collector, but *by the entry-clerk*, for the collector. This is not allowed by law. The collector and naval officer (where there is one) can alone sign permits., (R. S., sec. 2869.) All goods landed without permits are forfeited, (id., sec. 2867.)

The signature "O. Aubert, for collector," was utterly void. The power given by statute to an officer cannot be delegated to another, unless the statute so says. *Delegari non, &c.* "In respect to the Government, it is perfectly clear that no right exists in any public officer to delegate such an authority," (U. S. v. Ronsmaniere, 2 Mason, 377, second paragraph.) My views on this point were presented to and adopted by the supreme court of Maine, in Chapman *v.* Limerick, 56 Maine, 390, to which I beg leave to refer, especially to page 393, where Kent, J., states the far-reaching consequences of sanctioning any such mode of authentication: "It would reach to all cases where any public officer is required to sign any instrument or certificate," &c. This language was applied to a case where the officer requested the by-stander to sign the former's name to one particular instrument. It was the official name, and not that of the private citizen, that was signed; while here the permit did not even purport to have received the sanction of the collector, but was signed by "O. Aubert, for collector."

The case abundantly shows, however, that the collector did not assume to consider the question whether or not the tax had been paid on the liquors. He accepted the indications upon the barrels, and only directed his attention to ascertain whether or not any drawback had been allowed upon their exportation.

We think the bond and papers on which the entry was made were fraudulent, if not false; because they purported to proceed upon the ground that the internal-revenue tax was paid prior to its exportation.

We repeat that, irrespective of statute, it was incum-

bent upon the owner to show that goods imported without payment of duty were not subject to duty.

But the statute cited is express, that all distilled spirits found out of a warehouse, without the United States tax thereon having been paid, shall be subject to seizure and forfeiture, "and that the burden of proof shall be on the claimant of said spirits to show that the requirements of law in regard to the same have been complied with." (14 Stats., 163, sec. 45.)

The main ground of argument relates to the illegal branding of these casks.

A false and counterfeit brand was used upon these casks. The defense is, that it was not a brand, because containing no inspector's name, &c. The phraseology of section 38, already quoted, is noticeable. (14 Stats., 160.) It forfeits any cask upon which a person has knowingly used "*any* counterfeit or *spurious* brand or plate." If counsel is correct, which we cannot believe, that a counterfeit article must contain all the language of the genuine, yet this cannot be contended of a *spurious* brand. In fact, the most skillful counterfeit is most commonly detected through its omission in all respects to correspond with the genuine.

This court, in admiralty causes, is to judge the facts as well as the law. Therefore, I shall not dwell a moment on the preposterous assumption that the brand "manufactured prior to 1st September, 1866," was put on before exportation and prior to the approval of the act of July 13, 1866; the brief reply made to the next proposition will apply to this also. That proposition is, that if the branding were done in Mexico, it could not be

held illegal in the United States. It needed no citation of high constitutional authority to the point that our revenue-laws are not in force in the republic of Mexico. Had these liquors been branded in any manner whatever in that country, *and remained there*, neither they nor the person branding them would have been amenable to our laws. But they did not stay there. *Hinc illæ lacrimæ.* When returned to this country, they were again subjected to our jurisdiction. When re-imported bearing a brand forbidden by law, they were subject to forfeiture. The statute says that it is unlawful to "make or *use*" any spurious brand. The only apparent use to be made of this brand was here. The offense was committed the moment the contraband article crossed the line of our territory.

The sixteenth section of the act aforesaid is even more comprehensive than any already cited. It says, "that in case any person shall sell, give, *purchase*, or *receive* any box, *barrel*, bag, or any vessel, &c., * * * stamped, branded, or marked *in any way* so as to show that the contents, or intended contents, thereof have been duly inspected, or that any provision of the internal-revenue law has been complied with, *whether such stamping, branding, or marking may have been a duly-authorized act*, or may be false or counterfeit, *or may be otherwise without authority of law*," * * * shall be liable to the penalty prescribed. * * * "And all articles sold, given, purchased, received, made, manufactured, produced, branded, stamped, or marked in violation of the provisions of this section, and all their contents, shall be forfeited to the United States." (14 Stats., 152.)

These were distilled spirits of domestic manufacture.

It was unlawful to remove them unbranded, or with a spurious brand. The fact that they went to Brazos via Matamoras does not condone the offense, nor make that innocent which would have otherwise been ground of forfeiture, when the liquors so marked are again voluntarily brought within our jurisdiction.

The decree of condemnation was entered July 21, 1867. (Record, 30.) A writ of error was brought to reverse that final judgment; but it was unsuccessful; that original judgment still stands, having been confirmed by the circuit court.

Interest is therefore properly allowable from that date. Rule 23, § 1.

Not being referred to the page of record in No. 148 containing any evidence that the full 100 barrels were not delivered to the claimant, and being unable to find any such evidence, and the court having expressly affirmed the contrary, (Record, 17,) we will not discuss that question.

If the libel does not sufficiently set out that these casks were illegally marked and branded, we should be at a loss how to frame an amendment that would state this cause of forfeiture.

Inasmuch as the writs of error in these cases appear to have been sued out merely for delay, the defendants in error move for ten per cent. damages in addition to interest, under Rule 23, § 2.

EDWIN B. SMITH,
Assistant Attorney-General.

O

Survey. № 72.

Plat

of the Claim of the

DANEY GOLD & SILVER MINING COMPANY.

upon the **Mammoth Lode**

Devils Gate Mining District

Lyon Cy Nevada.

Containing 13 78/100 Acres

SCALE 300 Ft TO 1 INCH

VARIATION 16½ ° E.